



















A  
REVIEW OF THE PROCLAMATION  
OF  
PRESIDENT JACKSON

OF THE  
10th OF DECEMBER, 1832, ]

IN A

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UNDER THE SIGNATURE OF "A VIRGINIAN,"

HON. LITTLETON WALLER TAZEWELL.  
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# A REVIEW OF THE PROCLAMATION OF PRESIDENT JACKSON.

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## I.

NORFOLK, December 28, 1832.

THE recent Proclamation of the President of the United States, in denying the correctness of certain propositions that have ever been held (in Virginia, at least,) as fundamental truths of constitutional law, and by affirming, in the confident language of authority, the propriety and justice of other propositions, which we, of Virginia, have ever regarded as political heresies, seems to demand of some Virginian to review these, his various assertions.

I have waited ever since the Proclamation first appeared, in the hope that some one more disposed and better qualified to perform such a task, would undertake it; but as none such has yet done so, even I will essay its performance. In doing so, my sole object is Truth; the sole means I shall employ for its attainment, will be reason and fair argument; the sole authorities upon which I shall rely, will be the History of our country for my facts, and its Constitution for my principles.

When the occasion that has induced this Proclamation shall have passed away (as pass away it must), the questions raised by the President will still remain.

They have become the property of History. No matter how these questions may be now settled or disposed of, they will still arise hereafter as problems of deep interest in political philosophy, to occupy the anxious reflections of statesmen yet unborn, as they have employed heretofore the solemn meditations of the wisest

and best amongst us who are now no more. Seen through the long vista of Time, the meanings of the several personal allusions which darken the surface of this State paper, will not then be understood; the faults of its style will be then concealed by the rust, or ascribed to the prevailing taste of other days; even the spirit in which it is conceived will not be discerned, nor its immediate objects regarded. Under such a light do I now wish to examine it; and, disregarding everything but its doctrines, I propose calmly to inquire: Are these true? I may hereafter, perhaps, institute another inquiry as to the authority of the Chief Magistrate of such a government as that of the United States, to utter *ex cathedra* any dogmas whatever; and as to the probable effects of such a novel practice in this country, even if it is conceded that the dogmas so proclaimed may be true.

But as this is a matter of minor importance, and in its nature is properly consecutive of the first inquiry, I merely announce it now, to show that I have not overlooked a great question, which, under a different view of this subject than that which I propose to take, would present itself naturally at the very threshold.

As preliminary to the examination of the questions I have stated (which examination may very possibly be drawn out through several numbers), it will be necessary to offer a few brief and very general remarks upon the nature and objects of all governments, and upon some of the peculiar characters of our own.

These will constitute the matter of this number, which is designed as merely introductory of my intended investigation.

No history records, nor any tradition even faintly preserves, the commencement of that struggle between Power and Right, which has continued unceasingly to this day, and must still go on while man is but man.

Founded upon this long experience, is the general truth which so many particular examples illustrate, that whoever is possessed of authority will probably abuse it.

But as in a world compounded of good and evil, Right can never be long preserved, except by Power, the securities of Right must necessarily be confided to the custody of Power, although man is certain that this will be perverted, and often misemployed. It is better to trust the flock to the dog, although we know that

he will, and does, worry it, than to leave it defenceless against the insatiable voracity of the devouring wolf.

In yielding to the necessity of committing the preservation of Right to the care of Power, man has always endeavored so to muzzle and shackle Power, as that while its strength might remain unimpaired for the attainment of good, it should be impotent to accomplish any evil.

Free government is the device to attain this desirable end; and the various forms under which such governments have existed throughout all time, are but different inventions to accomplish the same purpose.

Parental affection, the obligations of Religion, the precepts of Education, and the division of authorities, all, all have been tried, in past time, singly, and in every sort of combination which ingenuity could suggest, as checks and limitations of Power; but they were all tried in vain. Power granted to protect Right has always proved unmindful of its charge. Sooner or later it has contrived to rid itself of the shackles imposed upon it; and governors, even when but the creatures and agents of society, have believed themselves born to command it, and have somehow or other become its Lords and its Masters.

Although always disappointed and defeated, yet Patriotism has never relinquished her hope of ultimate success.

In every new state of things, she has presented some new scheme, to remedy the known defects of her former plans, and to prevent their recurrence. For a long time nature herself seemed to oppose these devices, and to present her immutable laws as obstacles not to be overcome by the wisdom of the most enlightened sages. That the People should govern themselves, directly and immediately, was one of the experiments of Antiquity, which experience soon proved to them, could never be applied, with any hope of success, to any territory of wide extent, because it was impossible to gather together the people of such a territory, either as often, or as promptly, as their necessities required; and even if this was possible, their numbers would be too great for useful deliberation. Hence, it was a maxim of one of the wisest of the Greek Philosophers, that extent of territory was incompatible with the existence of a Republican Government. The same Phi-

losopher lived to see a small territory fall an easy prey to the ambition of a more powerful neighbor. Free government, therefore, seemed to be prohibited to mankind.

Centuries rolled by after the annunciation of this supposed political maxim; and it still continued undenied and undoubted by the learned. At length, Barbarism enveloped the better part of the civilized world, and the torch of Science was extinguished. It is in these dark ages, when the light of Science had ceased to shine upon a benighted world, that the historian first sees a new Star appear, to shed its lustre upon humanity.

Feeble were its rays at first, but they were soon collected by the watchful industry of Patriotism, and their heat then sufficed to rekindle the expired vestal flame of Liberty and Right, which has never since ceased to burn bright and clear. Learning may continue to deplore her losses by the ravages of the Gothic conquerors of the Western Empire, but Freedom finds ample compensation for this loss, in their great invention of Representative Government, and its necessary companion, Trial by Jury.

The present generation is not indebted to their barbarian progenitors for the inestimable blessing of Representative government only. To our Anglo-Saxon ancestors we also owe the invention of written Charters, the best guarantees of Liberty, while those who freely give, or those who bravely exact them, have the wisdom to understand the nature of the grants, and the firmness to preserve their provisions inviolate. Under such Charters, extorted from their Kings by the clear heads and stout hearts of their English ancestors, do their posterity enjoy all of Liberty now felt in Great Britain. To the sensitive jealousy always manifested by that people, at any attempt to violate the conditions of these grants, is the world indebted for the first idea of Constitutional Law, and legal Liberty.

The violation of this Liberty brought one King of Great Britain to the block, to atone with his blood for the crimes he had committed against its sacred guarantees. The attempted violation of this Law, hurled another from his throne, to expiate in exile his intended sins against the charters. Such is the foundation of British liberty, and such the means by which it was, and is still, secured.

When North America was first colonized by Great Britain, our forefathers settled here under the protection of written Charters, in each of which were they assured the full enjoyment of all the rights of free-born British subjects. These rights were trampled upon by the power of the mother country; and we were then too weak to protect them. But time rolled on, and we became stronger. Former submission provoked (as it always does) new aggressions. We first petitioned our Sovereign for relief, but he was deaf to our prayers. We then called upon our fellow-subjects to assist us in obtaining redress and security, but they, too, were heedless of our applications.

They so forced us to appeal to the God of battles, and in independence we wrung from our oppressors that which, had they have granted at first to our just supplications, might possibly have preserved much longer its richest jewel in the British Crown.

The chartered rights of British subjects were ours. Of these rights we had been unjustly deprived. Like our common ancestors, we demanded them in battle, and like them, by battle we obtained them.

Although the acquisition was sealed with some of our best blood, yet all knew it would be of little avail, if not secured by as much of wisdom and of valour as had been evinced in the purchase.

Therefore, to preserve and perpetuate that Liberty which had so been earned, our wisest citizens were assembled to devise a form of government. To these assemblages are we indebted for all our original constitutions, the peculiar characters of some of which charters, it shall be the purpose of my future numbers to display.

At present, I will merely say, that they were all the new inventions of most profound wisdom, designed to embody all that experience had shown to be useful, in any of the institutions of other times, and to apply it to the particular condition of this country then.

The Democratic form had presented the *beau idéal* of government to many of the wisest of the ancient political philosophers, because, under this form of government, the Rights of the people were guarded by the Power of the people; and it was not to be believed that such Trustees could ever prove false to such a

Trust. But experience had taught even these Philosophers, that under such a government, a small State could not defend itself with sufficient vigour against the sudden assault of a more powerful neighbour; and their own *a priori* reasoning had convinced them, that the principles of a Democracy could not be usefully applied to a wide, extended empire. Gothic knowledge, however, had achieved what Grecian and Roman learning had in vain attempted. In devising Representative government, it had obviated all the objections to a Democracy which antiquity had felt or seen. Hence, a Representative Democracy was everywhere adopted by the sagacity of the American statesmen, as that form of government most approved by the wisdom of the past, and best suited to the particular condition of our country at that time.

The origin of all former governments of this kind (if, indeed, any such had ever been), was hidden by the ignorance of the barbarian people with whom they had existed, or so imperfectly exhibited to modern view, as to enable us only to infer that origin, from the subsequent references to its supposed ancient features.

Most conspicuous amongst these references was that to the ancient positive compacts between the governors and governed, whereby the rights of all were supposed to be expressly declared and consecrated.

Whether such compacts had at first any other than a presumed existence, was a matter which, however interesting to the Antiquarian, was of little concern to the Patriot. Time had stamped the presumption (if it was such) with the authenticity of Truth: and in all his references to them, the sagacious statesman of ancient days regarded them as the solemn expressed assurances of the rights of the governed, to be guarded by them with all vigilance, and sealed anew, if necessary, with their best blood—*Voluntas leges Angliæ mutari quæ hucusque usitata sunt et approbata*, was the language of British freemen, who, trusting to their own vigour to maintain them, preferred to hold their rights under the customs of a time beyond which the memory of man runneth not, rather than to expose them to the cavil and artifice of insidious construction. Hence, all the instruments of British legislation designed to secure rights to the People, from the great charter of Runnymede, to the last act of Parliament which established the House



of Brunswick on the throne by the free voice of the people of Great Britain, all are but declaratory Laws, not professing to give what the people had not before, but merely to assure rights which had been theirs in all time past.

The wisdom of this example, although duly appreciated here, could not be imitated exactly in our country; but it taught a lesson which American Patriots improved. The monarchy of England was of an origin so ancient, as to defy any search for its primitive foundations. The prerogatives of the Crown and the privileges of the People both rested upon the same base, immemorial usage. All the declarations of what these were and ever had been, (no matter how such declarations were obtained,) proceeded from an existing and acknowledged sovereign, seeming at least to limit its own power by declaring it. But the American assertion of Independence, in dissolving our connection with the government of the mother country, left us no substitute for that, and so imposed upon us the necessity of establishing a new government for ourselves. A government thus created, could have no powers derivable from custom: could have no authorities but such as should be bestowed upon it in terms, by its creators. While these creators, in the very fact of establishing a new government for themselves, thereby asserted and manifested their pre-existing Right to do so. Hence, it resulted, and from necessity too, that while all the Powers of all our governments are derivative and temporary, the Rights of those who created these governments are self-existent and eternal.

Therefore, in each of these United States, the People by whom all our governments were created and established, are the only legitimate Sovereign. Governors and Magistrates of all sorts, are but the agents and servants of these their creators, appointed to attain the good of the People, by the exercise of the powers and authorities granted to them for that purpose by the People, and responsible to the People for the manner in which all these duties have been performed or neglected. In the relations between such a Sovereign and such its agents, the idea of a compact of any kind, can find no place. In governments whose powers rest upon force, the victor sovereign may grant to its vanquished subjects, rights and immunities, which being designed for the benefit of

the grantees, constitute a limit upon the authority of the grantor in being irrevocable. Such grants may well be termed compacts between the granting Sovereign and his accepting subjects, solemn agreements which neither party may of right alter, without the consent of the other. So too, in governments of unknown antiquity, according to the theory of whose unwritten law the governors are omnipotent, even if this vast power be derived not from force but from consent, this very consent constitutes a solemn compact.

In this country, however, none of whose governments have been established by force; where the origin of all is the creation of but yesterday, governors can fileh no Power, or the governed lose any Right in the gloomy obscurity and uncertainty of antiquity. Here everything is clear as was the light of that blessed day on which was proclaimed the sacred truths, that here the People are the only Sovereign of the People; that here magistrates of all sorts are but the agents and servants of this Sovereign, called into being by its fiat, solely for its own benefit, deriving all their authority from its grants, which grants are revocable at the pleasure of the grantors, because intended solely for their own good. But the idea of a compact, lawfully revocable at the will of one of the parties, would be a legal paradox, not less absurd than the moral absurdity of a compact between a creator and his mere creature formed for the Creator's own use.

It results from all this, that whatever of truth there may be in the theory of the political Philosophers of the old world, which considers government there as a compact between the governors and the governed, no such theory can be true here.

None of our governments can ever be considered as such contracts.

They are mere revocable procurations, simple delegations of limited and temporary authority, executed by the Sovereign People to their attornies, which agents are thereby authorized and required by their constituents, to accomplish certain purposes, by certain defined means, the constituents thereby allowing and confirming whatsoever shall be done by their attornies, under this power, and in pursuance of its authorities, but nothing else.—Here governors can derive no power *jure divino*, for they are

known to be the mere creatures of man's will, and designed for his use. Here they can claim no omnipotent authority, for the People created them, and the creator must be superior to his creature.

Here every legitimate power exercised by governors must be derived from grant, and when so derived, it is of course defined and limited.

Here the People gave all that is given, may take away at their pleasure all that they have given, and we all unite in calling down blessings upon that Sovereign People.

But who is this mighty and blessed and Sovereign People, the authors and preservers of the most stupendous work of human invention for the security and perpetuation of the liberty of man?

The answer to this enquiry shall constitute the subject of my next number.

## II.

NORFOLK, December 31, 1832.

Who constitute that great Corporation and body politic I have called The People, which all in these now United States concur in freely acknowledging as their liege Lord and only earthly sovereign by whose fiat all our governments have been created and endowed, and at whose will they may at any time be rightfully dissolved and annihilated? This is the question, which in my last number I promised to examine in this; and I now will proceed to redeem my pledge.

No American is so ignorant of the history of his own country, as not to know, that prior to the commencement of our Revolution, there did not exist anywhere on this vast continent, such a body politic as The People. Then whoever dwelt in America, was either a savage Indian, or the liege subject of some European Sovereign. None of the various savage Tribes who wandered over the surface of much of this continent, had then ever regarded themselves, or been regarded by any others as constituting a fixed Society acknowledging allegiance to any Sovereign, or as constituting that moral and accountable being called a State. Had any civilized man or set of men presumed, at that time, to assert his or their sovereignty here, the assertion would have been considered by all as sedition and the attempt to maintain it by force, as an overt act of treason against his European master; for all white men in America then claimed to be the loyal subjects of some such Lord.

It is true, that in British America, there existed sundry tracts of country delineated upon the geographical charts as British Colonies, the inhabitants of each of which regions were formed into separate and fixed Societies, whose affairs were regulated by long-established governments, the power of each of which gov-

ernments was limited by the particular boundaries of its own Colony, their acts having no obligation or force beyond the local limits of such territory. None of these governments, however, exhibited any such body politic as The People, for they all derived their powers, either mediately or immediately, from the British Kings, whose mere agents they ever had been, and then were. Nor were these Societies themselves known by any common name of distinction, but only as the Colony of Virginia, the Colony of Massachusetts Bay, of Canada, of Nova Scotia, and the like; for each of these communities was then separate and distinct, in all things, from every other, the Colonists being connected by no other social or political tie, save that of the allegiance which all acknowledged, not to any People, but to the Crown of Great Britain.

British misrule converted some of these subjects, whose loyalty had once been the highest boast, into sturdy insurgents against the authority they had before delighted to acknowledge; and in triumphant victory they achieved that glorious Revolution, which, under different auspices, might have been branded as a traitorous Rebellion. This Revolution, however, in dissolving the former governments, did not dissolve the former Societies; and years before it was perfected, the Revolt had taken place. No hope could be entertained of ultimate success to this Revolt, unless some new government should be established in the stead of that which had been dissolved, to order and direct proceedings, to sanction acts, to speak and to determine for all its members. But by whom, and for whom, was or could such an Institution as government, be then ordained and established here?

The general answer to this question is obvious. As all government supposes the pre-existence of some established Society, whose affairs it is designed to regulate, and the rules for the Civil conduct of whose members it is required to prescribe, therefore, by none other than some pre-existing and established Society can any government be created or ordained. Even when foreign force is the foundation of government (as is too often the case), still as such force can only be exerted by some established Society over the will of some other Society, or some part of it, when this force is employed with success, the victor Society, while dissolving

the former bonds of association of its vanquished antagonists, incorporates them as a part of itself, under whatever conditions it may please to prescribe, and so creates and ordains a government for them. But when the foundation of government is not force, but consent, it would be a paradox to suppose the consent of any others than of those who had the right to consent, that is to say, of the members of that particular pre-existing and established Society for the regulation of whose affairs such government is designed. None then but the pre-existing established Societies in British America, could ordain a government for such Societies, except by force; and the government ordained by any one of these Societies, deriving all its powers from it, could have had no authority except over that Society itself.

When we apply this obvious general conclusion to the facts of the particular case, we must all be at once convinced, that all the primitive governments of the different revolted Colonies of Great Britain must have been ordained and established by the *several* Societies then existing in the revolted Colonies respectively, and for their own special and particular benefit. Therefore, that none of these governments could have had any other authority than to regulate the affairs of their own creators, and of none others. I say, that these governments must have been so established and so endowed, because at that time there did not exist, nor ever had existed, any such society or community as The People of America, or of the British Colonies in America, or of the revolted British Colonies in America, or under any other name or form, save that of the Colony of Georgia, of South Carolina, etc., etc. Therefore, by these several and distinct communities alone, all our primitive governments must have been, and in point of fact were, ordained and established; and governments being so established, these several communities, their respective authors, thereby assumed to be, and so far as they were severally concerned, became, that great moral and accountable being, a sovereign State, which, having chosen the Democratic form for its government, was known and styled the Commonwealth.

Doubtless the different revolted Colonies might, if they had thought proper, have consented to amalgamate and blend themselves together into one single Society, and then have established

any sort of government which they chose for this new community. Had they have done so, we should never have heard of the State of Pennsylvania, or the Commonwealth of Virginia. In that event, none of these former communities would have possessed sovereignty, the essential attribute of a State, for all would have sunk and dwindled into mere municipalities, bodies corporate but not politic, created or permitted to exist, not by their own will, but at the will and pleasure of this other more august being "The Nation" by whatever name that "Nation" might have been pleased to baptise itself. But the patriot Sages of that day did not choose so to do.

Nor was this decision the result of any "State pride," or designed "to find advocates" in any "prejudice," although that prejudice might be "honest." No, it was dictated by that profound and sagacious wisdom which can see the future in the past. These patriot Sages had read, and well knew, that Communities occupying different territories of wide extent, situated under different climates, professing different religions, long governed by different laws, having different manners, habits, customs, occupations, and, of course, many different and conflicting interests, could never be melted down into a single Society, and kept together as such, but by a much stronger power than any which they thought it either safe or prudent to create. Such communities, while separate and distinct, might be well and easily confederated, nay, even united, for many purposes useful to all and essential to some, and still continue to enjoy liberty in peace. But the day which should see them compressed into one Society, to be governed by a single overruling consolidated government, would be the eve of that on which their Freedom must be sacrificed to the power of an interested majority, in the very temple dedicated to its perpetual worship, unless the victim might be saved by arms.

Convinced of this, there was not one Statesman in any of these different Colonies at that day, who even proposed, or who even conceived, so far as we know, the wild and mad project of establishing a single Society, to be composed of all the revolted Colonies, and to be regulated by a consolidated "National" government, stretching itself over all. This conception was the product

of an after-day.—How it was treated when it was first presented, I will show at some other time.

Does any one doubt now, whether the first governments established in these now United States, were ordained by the several revolted colonies, each acting as a Sovereign, for itself, and by itself, without any reference to or dependence upon any other colony? Let him consult the history of that day, and he will find that the Revolt was not a simultaneous movement of all these Colonies, but was effected in each by several successive acts performed at different times. Nay, that independent governments had actually been established in several of these colonies, and were in full operation before any declaration of Independence was uttered by them all when assembled in a general Congress. So true is this, that even to this day, it is a matter of amicable contest among several of these different communities, now States, which of them is entitled to the honour of first annulling the Royal Authority within its own domains, and proclaiming itself a patriot Rebel.

Massachusetts claims it and points to the fields of Concord and of Lexington to prove her claim. Virginia claims it, and mentions prior acts of Treason in Arms which she had dared to do. North Carolina claims it and shews her written declaration of Independence, fearlessly promulgated to the world, while some others were yet in doubt which side to take in the struggle to maintain their rights. To Massachusetts and Virginia she might say, your acts of Treason were but Insurrections, for when you performed them you still professed to acknowledge yourselves dependants of the Authority you then resisted in arms; but mine was the first act of glorious Rebellion, for by it I renounced my former allegiance and proclaimed my own Sovereignty.

Does any Virginian sceptic still doubt? I refer him to the date of our first Constitution, to prove that this form of government was ordained and *declared* by “the Delegates and Representatives of the good People of Virginia” assembled in Convention, *before* even the date of the declaration of Independence, and long before the signing and promulgation of that act. Referring him also to the language of that Constitution and of its accompanying Declaration of Rights, I ask him to tell me, to whom, after the



promulgation of these instruments, did the People of Virginia owe any allegiance?

He will not say, that their allegiance was then due to their former liege Lord the King of Great Britain, for in these acts, after first asserting "that all power is invested in, and consequently derived from the People—that government is, or ought to be, instituted for the common benefit, protection and security of the People—that when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right, to reform, alter, or abolish it"—the authors proceed to declare, "that the government of this Country, as formerly exercised under the Crown of Great Britain, was totally dissolved."

He will not say either, that this allegiance was due to any of the other Colonies, for none of them had any stronger claims to the allegiance of Virginia, than she had to theirs—nor that it was due to any government formed by all the revolted Colonies, for there was no such government at that time—nor to the People of the United Colonies, for no such People had ever existed, nor were these Colonies then united by any political tie whatever.

Were we then a gang of Banditti, a wretched horde of barbarians, a mere savage tribe, without law or any institution of civil polity to bind our society together by the strong bond of a common allegiance?

Assuredly, we were not such, for to prevent this "deplorable condition, to which this once happy country must be reduced, unless some regular adequate mode of civil polity was speedily adopted," the same convention in the very act which declared the total dissolution of the former government, ordained "the future form of Government of Virginia." In this form of Government was proclaimed the name of this new body politic or sovereign by which it was created. This Sovereign was called, "The Commonwealth of Virginia," and all our people pledged themselves through their Representatives "to be faithful and true to this Commonwealth," and called upon their God to attest the solemn pledge.\*

\* The form of the present Oath of Allegiance in Virginia, or "the assurance of fidelity," as it is here called, is a curious and important instrument, to which I

Was this pledge violated by any overt act of force? The act was declared to be Treason, and the proper punishment of this crime was announced. If it be true then, as the President in his Proclamation says, that "Treason is an offence against sovereignty, and sovereignty must reside with the power to punish it," the Commonwealth of Virginia which defined this crime against itself, provided for its punishment, and once at least inflicted, it must have been a sovereign.\* But if ever a sovereign, she be-

shall probably refer at some other time. It runs thus: "I — —, do declare myself a citizen of the Commonwealth of Virginia; I relinquish and renounce the character of subject or citizen of any Prince or other State whatsoever; and abjure all allegiance which may be claimed by such Prince or other State; and I do swear to be faithful and true to the said Commonwealth of Virginia, so long as I continue a citizen thereof. So help me God" (see Revised Code of 1819, Vol. I., p. 72).

No person has power to act in any office, legislative, executive, or judiciary, before he shall have given this assurance; and all who may by law be required to give assurance of fidelity, must for that purpose take this oath. [See the Law *ut supra*, which was re-enacted on the 7th day of January, 1818.]

\* The law of Virginia defining and punishing Treason, is the sanction of the oath of fidelity, and is not less curious and important than the form of that assurance. It is in these words: "If a man do levy war against the Commonwealth in the same, or be adherent to the enemies of the Commonwealth, within the same, giving to them aid and comfort in the Commonwealth, or elsewhere, and thereof be legally convicted of open deed, by the evidence of two sufficient and lawful witnesses, or his own voluntary confession, the cases above rehearsed shall be judged Treason which extendeth to the Commonwealth, and the persons so convicted, and, his or her aiders, abettors and counsellors, being thereof convicted, shall suffer death, by hanging by the neck without benefit of clergy. Also, every person or persons, who shall erect or establish, or cause or procure to be erected or established, any government separate from, or independent of the government of Virginia, within the limits thereof, unless by act of the Legislature of this Commonwealth for that purpose first obtained; or who shall, in any such usurped government, hold or execute any office, legislative, executive, judiciary, or ministerial, by whatever name such office may be distinguished or called; or who shall swear, or otherwise solemnly profess allegiance or fidelity to the same; or who shall, under pretext of authority derived from, or protection afforded by, such usurped government resist or oppose the due execution of the laws of *this* Commonwealth, shall be adjudged guilty of high Treason, and shall be proceeded against, and punished in the same manner as other Traitors may be proceeded against and punished."—[See Revised Code of 1819, Vol. I., p. 591.]

The scholar may read the rough English of some parts of this statute, as he does the bald and confessedly bad Latin of Magna Charta, with a contemptuous

came such at the moment when she "totally dissolved" the former government, and in establishing a new form of government for herself, thereby announcing her absolute independence. All these acts were done *before* the fourth day of July, 1776. By these acts she then became free, sovereign, and independent; and from the bottom of my heart do I unite with the President in the fervent prayer, "May the great Ruler of Nations grant that the signal blessings with which he has favoured us, may not, by the madness of party or personal ambition, be disregarded and lost." But what is this ideal being of which every Virginian then acknowledged, and every Virginian still acknowledges, himself to be a liege, and which we have called "The Commonwealth of Virginia." It is the People of Virginia. The members of that established society within this "Ancient Dominion," who renouncing all allegiance to a former Sovereign, incorporated themselves into a body politic, chose to bestow upon themselves this new Corporate name, in order to preserve and perpetuate the succession of the sovereign rights which they had then assumed.—Most of these patriots have sunk into the tomb, and the few who remain must follow them ere long; but long after the last of them shall be no more, that body politic and corporate styled "the Commonwealth of Virginia," will, by the blessing of God, still live; and while it does live, this name will denote the People of Virginia of any other day, as expressively and as justly as it did those by whom the name was first assumed.—That Commonwealth yet lives, and remains as sovereign now as then, unless it has done or suffered some act in the interim, to abrogate its powers or annul its rights.

The people of Virginia, in shaking off their former allegiance, establishing a new form of government for themselves, and so assuming sovereignty and independence, did no more than was

sneer; but let him remember, that it is not to learning, but to knowledge, we are indebted for our Liberty. Let him also remember, that in Virginia, we do not value highly that pedantry, which would amend the provisions of old instruments for the mere purpose of making their style more smooth, grammatical, or classical. Those who re-enacted this statute on the 28th of January, 1819, copied the rough parts of it from the old act of 1776, which was believed to be an accurate paraphrase of a very old English statute, written, I believe, in the Norman French.

done, sooner or later, by each and every one of the thirteen revolted Colonies of Great Britain.

Each of these, like Virginia, became, in virtue of such acts, that free, sovereign, and independent body politic called a State; and becoming such, it took upon itself any corporate name it chose to adopt. But as all the governments then established were Representative Democracies, this corporate name, whether it was the Commonwealth or any other, was designed to denote the free people of that pre-existing and established society before known by the name of some of the revolted British Colonies.

If, then, we ask, who constituted at that time that great Corporation and Sovereign body politic which I have called The People, which is the Lord of all in these now United States, the answer is, not the People of all the revolted Colonies collectively, but the People of each of them respectively. All individuals, being members of any one of these separate, distinct, and independent masses, owed faith, and truth, and allegiance to that particular mass, which, under some selected corporate name, designed to distinguish it from all others, was then proclaimed as their only earthly sovereign.

Such were the People of these Colonies then. As individuals they were subjects, as a body politic and corporate they were the sovereign of these subjects.

Such sovereigns and such subjects these People have been ever since, and still are, unless (as I have said before) they have done or suffered some act, during the interval of time which has elapsed since they took upon themselves these characters, to change this, their moral and political condition. Have they done so? This is the question which I propose to examine in my next Number.

## III.

NORFOLK, January 2, 1833.

THE People of each of the several revolted Colonies of Great Britain, having become free, sovereign, and independent States, in the manner stated in my last number, must necessarily continue to be such Sovereigns now, unless they have done or suffered some act, since this their Sovereignty was assumed, whereby its rights and powers have been annulled. Have they done or suffered any such act?

This is the question, which, in my last number, I proposed to examine in this. But a reperusal of the Proclamation of the President, since this promise was made, having shewn me, what I had not before observed, that doubts are therein cast upon the truth of my proposition which asserted the primitive sovereignty of the several States, although this is often admitted, by necessary implication, at least, in many other parts of this very instrument itself, I think it right to endeavor to remove all these doubts before I proceed further in the execution of the task I have undertaken.

During the various discussions, which the agitation of the questions as to the extent of the legitimate powers of the present government of the United States called forth, in former days, this asserted original sovereignty of the States was admitted and claimed by both sides, and was made the very basis of all the arguments of Federalists and Democrats respectively.

To these discussions, there was then brought, by either party, as much of zeal, of industry, of wisdom, and of laborious research, as have ever been manifested in this country, before or since; and the discussions were conducted, on either hand, by many of the Patriots of the Revolution, who were familiar with all its events, because they had been actors and advisers in that great scene *ab initio*.

Nay, it used to be then contended, by either party, that the jealous retainer by the States of their primitive rights of sovereignty, had caused the necessity for the then new Federal Constitution.

But, like Moliere's mock doctor, "*nous avons changé tout cela*," and the new College of Politicians, having younger, and of course wiser heads, have of late discovered, that all this was a mistake. The fashionable doctrine of the present day seems to be, that *these States never were Sovereign*; that there was, from the beginning, some great Central Sovereign power, abiding somewhere else than in the several States, of which they were subjects, and all their people lieges. In illustration of this new doctrine, the Proclamation says, that "in our colonial state, although dependent upon another power, we very early considered ourselves as connected by common interest with each other.—Leagues were formed for common defence; and before the Declaration of Independence, we were known in our aggregate character as The United Colonies of America. That decisive and important step was taken jointly. We declared ourselves a nation by a joint, not by several acts."

The exceeding caution in which this passage is penned, its intended assertions of doctrine, while seeming to narrate facts, merely, and the opening it obviously and designedly leaves, for escape from these doctrines, under the fog and smoke of verbal criticism, should the doctrines be thereafter controverted, may perhaps excite the admiration of minds trained or training in the mazes of diplomacy.

But when found in a State paper, uttered by the Chief Magistrate, and announced by him, as being intended for the edification and instruction of those to whom it is addressed, it can never meet the approbation of the candid and ingenuous.

Its obvious purpose is to assert, as a political dogma, that the revolted Colonies became one Sovereign Nation, before they severally assumed sovereignty upon themselves as individual States; and so to prove, that the States never were sovereign. But as this new doctrine was in direct conflict with all our past opinions, and in seeming opposition to much of our past history, it would not do to blurt it in the public face at once, as doctrine, therefore

it is presented seemingly as a simple fact. Nay, it is not exhibited as a substantive fact, but in the modest guise of a mere inference from other facts. These other facts, too, are asserted in selected terms of such broad and general signification, that it is difficult to fix their precise meaning. If, seeing the necessary tendency and effect of the doctrine designed to be put forth in this passage, any one denies its truth, such may be immediately met by the assertion, that it is not stated as doctrine, but as historical fact merely. If it be denied as such a fact, it may be immediately said, that it is not asserted as a substantive fact, but only as one inferred from others previously stated. If the correctness of this inference is questioned, then commences a discussion as to the true meaning of the words employed to state the facts from which the inference is made; and this discussion, if it convicts the author of error, will also furnish him with an excuse for saying, that he is no scholar, not skilled in "metaphysical subtlety," and therefore, may have used terms inappropriate to convey, accurately, his own meaning, which, however, is precisely yours. But if the true signification of the words employed in this apparent and simple narrative, is once admitted to be that in which they are obviously used, and if the facts themselves, so told, are conceded, then no logical mind can escape from the conclusion derived from such facts, and the purpose of this argument, which is to disprove the original sovereign rights of the States, is fully attained.

The ingenuity of an argument thus constructed, undoubtedly has merit, but it is not such merit as ingenuous candour can ever claim. It imposes upon all who may deny its conclusion, the laborious task of unravelling a long tissue of supposed errors, and when they have done so, it exposes them to the sneer of having laboured to disprove what, it will then be said, was never affirmed.

On the other hand, if they pass by such things unnoticed, they immediately fall into the snare laid for them, from which they cannot then easily extricate themselves.—For one, I greatly prefer to undertake the labour, and to subject myself to the sneer, than to incur the other hazard. Therefore, I will bring the whole of this narrative and argumentative passage to the test of a strict analysis. Its importance justifies, its art requires this.

The object of this argument, (confessed in its conclusion,) is to prove that the People of some of these now United States, while in their colonial state, declared themselves to be a Nation, by the Declaration of Independence made in 1776, under which they became "One People." The necessary and inevitable result of this would be, that the People having once resolved themselves into one Nation, could not thereafter create themselves into separate and independent sovereignties, otherwise than by force, or by common consent.

But as no one has presumed, as yet at least, to establish, or to attempt to establish sovereignty here, by force; and as there exists not the slightest memorial of any common consent on the part of this supposed Nation, to its own dismemberment, therefore the sovereignty of the States never could have existed. The author of this Proclamation, does not seem to have been aware of the fact, which I stated in my last number, that before the declaration of Independence in July 1776, the People of Virginia certainly, and of several of the other Colonies, I believe, had severally announced their own sovereignty and independence, in totally dissolving their former government, and ordaining new governments for themselves respectively. But if such a fact had been known to him, it would not have changed the intended effect of his conclusion; because, as this new Nation is said to have been created by the People, a part of which People the creators of State sovereignties were, their last act would of course have abrogated and annulled their first, and so put an end to the sovereignty which they had created but a short time before. So that the Sovereignty of all the States which had declared themselves sovereign before the declaration of Independence in July 1776, is as certainly annulled, as the existence of the sovereignty of those States who had not then declared it, is prevented, by the mere assertion of this simple fact of our existence as one nation, if that fact was true. A matter so important in its consequences ought not, and would not be conceded, to the mere say-so of any man, although that man might be the President; therefore, it became indispensably necessary, that he should prove it. Hence the attempt to do so.—Let me now examine what these proofs are.

As the object was to prove the existence of a Nation, the first



step of the process must necessarily be to prove the pre-existence of a community. Government being superinduced upon this community, it would then become a Nation, so far at least as all the members of that community were concerned. The first point to be proved, then, was the existence of a community composed of all the People who were afterwards to become the subjects of the nation. Now how is this established?

“In our colonial state,” says the President, “although dependent on another power, we very early considered ourselves connected by common interest with each other.” A more flimsy pretext, from which to infer the existence of a single community, could not easily have been selected; and yet a more ingenious mode of getting up this pretext could not well have been devised. Mark, no social connection of any sort, is affirmed to have actually existed; it is merely said, that we very early considered ourselves as connected. And by what was this imaginary connection constituted? Were we inhabitants of a common territory, the vacant and unoccupied parts of which were admitted to belong to all? No.—Did we profess the same religious faith? No.—Did there exist any one institution, which having been created or preserved by all, was therefore common to all? No.—By what tie then did this People consider themselves to be connected, in their colonial state? Why, by the single tie of a supposed common interest. No man before President Jackson, ever thought of inferring the existence of a community from such a fact, which if believed to be sufficient to produce that effect, would consolidate, probably, one-half the People of the whole world into one community, and by so doing, would dissolve more than the half of all the societies now existing, whose members do not even consider themselves connected by any such tie.

But perhaps it will be said, that I do the President wrong, in supposing that he meant the People when he says “we,” that by this personal pronoun he did not mean to denote all the Colonists, in their individual, but in the social characters which they had long had, and which was denoted by the term Colonies. If so, this sentence becomes the simple annunciation of a well-known historical fact, proved by numerous documents in our archives, that even in their colonial state, the several Colonies considered themselves as connect-

ed with each other, by a common interest. But as all these documents while establishing this fact, establish also, that this belief of a common interest was neither designed or ever supposed to amalgamate the different Colonies, by whom it was entertained, into a single community, but merely to invite to their co operation confederacy and union as distinct independent communities, it is not easy to discern how from such a fact, the existence of a single community could be inferred. Therefore, and as the use made of the assertion was afterwards manifest, I was bound to consider its meaning to be such as I have stated; especially as I found this word "we," in an address of the President to his "fellow-citizens, the People."

So much for the first proposition of this argument, which if considered in one light, asserts a truth directly in contradiction to its conclusion; and if considered in another, asserts not only an unknown fact, but one unimportant if it could be known. In which of these lights it was designed to be seen, let the rules of the English language, and the conclusion of the argument itself, determine.

Having inferred the existence of one great community, composed of all the People of the different revolting Colonies, while yet in their colonial state, the next step necessary to be taken in the argument designed to prove their subsequent existence as one nation, was to superinduce a government upon this great community: for a nation without a government, would indeed be a non-descript, as horrible in the Political, as any of the fabled monsters of the natural world. Here, as before, it would not do to affirm the establishment of any such government, at the time referred to, that is to say, "in our colonial state," as a positive fact, for this would be in direct contradiction of the other affirmation, of our dependence on another power; and of such a fact too, there does not exist any scintilla of proof in any of our histories or State papers. Therefore, the existence of such a government, like that of the community, was to be inferred. Now from what is this second inference to be made?

"Leagues were formed for common defence," says the President; and as leagues can only be formed by communities, acknowledging some government, authorized to speak and so to

contract for them, if the fact be conceded that Leagues were formed by this great community, it establishes beyond doubt, not only the actual existence of such a community, but of its government, too. But mark the caution displayed in this assertion, also. The President does not say, in terms, at least, that these Leagues were so formed, but most sedulously avoids to state by whom, or with whom, they were formed. The cause of this studied obscurity is not difficult to be explained. If it had been asserted as an historical fact, that in their colonial state, the Colonists being connected together as one community, had, in that character, entered into any League whatever, this fact could not have been proved, simply because it neither is, or could be, true. But if it had been said, that these Leagues were formed by the different colonies with each other, as separate and independent communities, in asserting this well-known historical truth easily to be proved by a reference to the Leagues themselves, the President would have dissolved completely his imaginary great community, and with it the government to regulate the affairs of this supposed Nation.

Nay, he then would have established, beyond doubt, the separate and independent existence of the colonies, as acknowledged by themselves, in such Leagues.

To avoid this dilemma, the author of this Proclamation most cautiously suppresses the fact by whom and with whom these Leagues were made. Yet, as they were certainly made for "common defence," all those who may be disposed to believe that "we" in the first sentence denoted the Colonists as individuals, and not the colonies as communities, will of course conclude, that these Leagues were made by the same "we," with some community foreign to themselves. While those who understand "we" in a different sense, will arrive at a conclusion diametrically opposed to this,—so much for the second member of this argument, which, like the first, is either true or false, according to the meaning intended to be annexed by its author, to the words, "we" and "our."

Having inferred the existence of a supposed community, and also inferred a government for it, in the mode I have stated, the next thing needful was to bestow a name upon this infant Nation. But, as it would have been difficult to infer a name which could

not have had any previous existence, the President was compelled to state this name positively. Therefore, he next says, that "before the declaration of independence, we were known in our aggregate character as The United Colonies of America." The attempt to infer any fact, from any name, merely, would be considered, generally, rather as an assumption than an inference. But to infer the fact of a single Nation, from the name of many United Colonies, or of many Colonies United, whether in America or anywhere else, is not only a groundless assumption, but a plain perversion of the meaning of words, unless United means Consolidated. The President seems to have been aware of this, therefore, to do away, so far as he could, the effect of his own strong words, United Colonies, used, apparently, to shew, that the Colonies were united, and not consolidated into one mass or Nation, he tells us, that "we were known in our *aggregate* character" by this name.--Although I cannot help considering this phrase of "aggregate character" as very infelicitous, especially when applied to United Colonies, yet I freely admit that the excuse of the Rhetorician may be found in the necessity the Politician felt to employ it. There were two differing parties interested in the matter he was examining, and he was desirous to please both; therefore, from the beginning of his argument, he had used terms so general, that either might apply them to their own side: but when he came to give a name to his Nation, he found that so clearly indicating that it was not one consolidated mass, but many distinct masses united, merely, it was necessary to weaken the force of this. Hence, he tells us that, although we were united by name, yet in character we were aggregated, that is to say, consolidated.

From what source the President may have derived his information as to aggregate character, except from its name, I know not. But if his information as to our character is as inaccurate as his representation of our name, but little reliance should be paid to it. I have before me a copy of the Journal of the first Congress, which met at "the Carpenter's Hall, in the City of Philadelphia, on Monday, the 5th day of September, 1774." In this first and most authentic document, which any one can consult, to discover either their name or character, at that day, both the one and the

other is thus described: "We, the Delegates of the *several* Colonies of New Hampshire," etc., etc., (naming each), "deputed to represent *them* in a Continental Congress." Under this name, and in this character, was their first great act of Association entered into, for non-importation, non-consumption, and non exportation, and recommended "to the Provincial Conventions, and to the Committees in the respective Colonies," to be carried into effect by them. Under the name and character of "The Delegates appointed by the several English Colonies of New Hampshire," etc., (naming each), "to consider of their grievances in General Congress," was their next great act, the Address to the People of Great Britain, uttered under the name and character of "We, the delegates of the Colonies of New Hampshire," etc., (naming each), "deputed by the inhabitants of the said Colonies, to represent them in a general Congress, to consult together," etc., was the Address to the inhabitants of the Province of Quebec, put forth. Under the name and character of "We, your Majesty's faithful subjects of the Colonies of New Hampshire," etc., (naming each), "in behalf of ourselves and of the inhabitants of these Colonies, who have deputed us to represent them in general Congress," was the Address to the King adopted, which was the last act of that enlightened and patriotic body, the first Congress. In short, there cannot be found a single act of the first Congress, in which that body denominated itself as "The United Colonies of America," or in which its members denominated themselves as delegates of or to any body of that name. So far from it, all these acts shew, upon their very face, that they were the acts of individuals, representing respectively, not one, but *several* constituent bodies, and these individuals, as the representatives of such constituent bodies, respectively, were said to be assembled in a general Congress. In further proof of which it may also be remarked, that the very first rule established to regulate the proceedings of this Congress was, "that in determining questions, each Colony or Province should have one vote," without any reference to the number of its delegates present, or to its importance in any sense whatever.

Upon such evidence, I think myself justified in saying, that, although, at some subsequent period, it may possibly be found,

that the delegates united in a general Congress, in some of their ordinary proceedings, and for brevity's sake, may perhaps have spoken of themselves as the delegates of the United Colonies, yet in all solemn acts they are differently described. Thus, in the most important paper which they could utter, the Commission to Gen. Washington as Commander-in-Chief, granted on the 17th June, 1775, they style themselves "The Delegates of the United Colonies of New Hampshire," etc., (naming each, as before), and by that name, and in that character, grant to him all the rights and authorities which he then acquired. Therefore, the President seems to have as little ground for bestowing this new name of the United Colonies of America upon all the revolted Colonies or Colonists of that day, as he has to bestow upon the Colonists any such aggregate character as that under which he is supposed to assert that they were then known.

Whether by the declaration of independence, uttered in 1776, either in the manner in which "that decisive and important step was taken," or in the language of that instrument, "we declared ourselves a Nation," and so annulled or prevented all the sovereign rights of the States, is a question I should have examined in this number, except for the reason I have before stated.

But, Mr. Editor, I have already occupied so much of your space, that I must not intrude upon it at present, further than to say, that this declaration, being the *first act* which occurs in our history, that can be, or is supposed to annul any of the Sovereign rights of the States, its minute examination made a part of my original plan, which will be prosecuted in my next number.

## IV.

NORFOLK, January 4, 1833.

THE Declaration of Independence uttered in 1776, was considered, at that day, as the most important act which had ever occurred in this Country, and subsequent time has not weakened the sentiment it was then intended to inculcate.

We still continue to commemorate it annually, on the day of its date, when all the citizens of these now United States, join with one accord, in humble adoration and joyful thanksgiving to that Divine Providence, under whose protection, the great truths it announces were afterwards maintained and established.

But if the effect of this Declaration, was to consolidate all the then Colonies, by whose representatives it was made, as one nation, and to amalgamate their inhabitants into "One People," the Fourth day of July, instead of being celebrated as a Jubilee, would probably be spent much more appropriately in weeping and in wailing. Was such the true nature and intended effect of this Declaration? This is the question I propose now to examine.

In speaking of this Declaration, the President says in his Proclamation, "that decisive and important step was taken jointly—we declared ourselves a Nation by a joint, not by several acts." It is obvious from this passage, that its author designed to establish the existence of a Nation, not less by the manner in which this Declaration was made, than by the actual assertions of the instrument itself: for not satisfied with stating that this step was taken *jointly*, he adds, that by such a joint act we declared ourselves a Nation. I will examine into the truth of all these assertions, before I give my own views of the subject.

A joint act, *ex vi termini*, implies the co-operation of several agents, by whose united and joined agencies it has been produced.

Hence, it would be a very great solecism, to speak of any act done by one agent only, as a joint act; and therefore, no corporate act is ever properly described, as a joint act of a Corporation, even when such a body is composed of many members: for although the members may be many, the Corporation is but one, and the act, if a corporate act, must be performed by that one body only. It is not every act effected by the co-operation of several agents, however, that is properly termed a joint act. Because, although considered in reference to the number of its authors, every single act accomplished by the co-operation of several agents, must be their joint act, yet considered in reference to its intended effects, as these may be many, and attach to all, to each, or to some only of its agents, the act is regarded as either joint or several, according to the nature of these intended effects. But as the intent of the act, cannot possibly be inferred from the number of agents co-operating to its accomplishment, while it is admitted, that several as well as joint effects may and do result even from a joint act, the nature of such an act can only be ascertained from the intention of the agents. This intention must always be sought for, and generally, is best manifested, in the declarations of the agents employed to perform the act, especially when these declarations are uttered in the act itself, and of course at the time of performing it. If these plain propositions, which every Tyro has hitherto acknowledged to be true, are still admitted to be correct, it will be found difficult certainly, nay impossible probably, to reconcile them with the assertions of the President, when the effect intended to be produced by these assertions is remembered. The object in view in making these assertions is to prove thereby, that by virtue of the Declaration of Independence we acknowledged ourselves to be one Nation. Hence, the President says "that decisive and important step was taken *jointly*." Now if by this he means to say, merely, that this declaration was the work of many persons co-operating to produce it, no matter in what character they acted, he asserts a fact so unimportant to his purpose, and so familiar to every one, that it really seems almost ludicrous to utter it with such apparent gravity, if indeed it was necessary to state it at all.

But if he means to be understood, as asserting that this declara-



tion was the joint act of the representatives of any single body, previously known as a Community or Nation, besides the historical error committed, he states what must be unintelligible to all, except to those who can comprehend how any single body can do any joint act.

I should have been disposed to consider this sentence as a mere inaccuracy, caused by the precipitate haste in which this State paper was probably prepared, and therefore, to have passed it by unnoticed, but that it is in exact keeping with all the previous parts of this argument, and moreover, is in substance repeated more impressively, in the next sentence, wherein it is said, that "we declared ourselves a Nation by a joint, not by several acts." Now, if we were a Nation before the Declaration of Independence was uttered, (as it was the purpose of all the previous parts of this argument to prove,) it would have been impossible for us as a Nation, to proclaim this fact by any joint act: and if before that event occurred, we were not a Nation, but separate communities or individuals, it seems difficult to conceive how we (whether the Colonies or Colonists) could have declared ourselves as a Nation, by any other than several acts.

The reason of all this mystification and apparent absurdity, will be obvious, when we come to consider the declarations actually made in the Declaration of Independence itself. We shall then find, that this instrument, instead of proclaiming the Colonies to be one Nation, declared them to be "free and independent States," in terms. Hence, as it was impossible to infer the existence of one nation from such terms, in which this idea is so plainly and positively negatived, resort was had to the manner in which this declaration was made; and we are told, "that decisive and important step was taken jointly," and that "we declared ourselves a Nation by a joint, not by several acts"—as if the plain and obvious meaning of the act itself, could be changed by any such extrinsic circumstances.

I have now done with this part of the argument of the President, the design of which is to show, that these States never were sovereign, in showing that they constituted but parts of another sovereignty called the Nation.

I will now proceed to give my account of the Declaration of

Independence ; and therein to state my ideas of its effects upon the several Colonies, who, by their representatives, were parties to that instrument.

The true nature and intended effects of the Declaration, can never be understood, from a consideration of the manner in which it was executed, merely.

Whether it was produced by the agency of one, only, or by the joint agency of many, or by the several agencies of different persons co-operating to the same end, is of little consequence. Its object and intended effects must be inferred from its language, although if that is ambiguous, these may very properly be sought for in extraneous circumstances of any kind, whether these circumstances are found in the manner of the execution of the instrument, or in anything else.

Let us then, turn to the act itself, and judge from its contents, of its end and object, before we attempt to discover these last in any other way.

When so examined, the Declaration of Independence seems to be a manifesto, addressed to the world, that is to say, to the civilized world, designed to inform it of the pre-existence of a new event interesting to humanity, and of the causes and circumstances which had occasioned the occurrence of this new fact. Like the manifesto that generally accompanies or immediately follows every modern Declaration of War, which, in announcing the new relations of the belligerents, and narrating how these have been produced, it so contains an implied appeal to other States, and to posterity, for the justification of those by whom this new state of things has been made necessary. Considered in this light, it asserts nothing but what had previously existed, although but recently ; and its object is confined to the justification of that pre-existing state of things which it so announces. If this was its purpose, it cannot be considered as creating any new community, as ordaining any new government, or bestowing any new name ; but as intended merely to announce the new condition in which former societies, under existing governments and names previously known, are placed. Its sole end, is to justify to others that new condition which has been recently assumed by those who utter the manifesto.

Whether this notion of the Declaration of Independence be correct, must depend, mainly, upon its own language. Let me, then, examine what this is.

It commences by saying, that "when, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires, that they should declare the causes which impel them to the separation." Here, then, confessedly, is an appeal to mankind, induced by the decent respect due to their opinions, designed to inform them of the fact of the dissolution of the political bands which had previously connected those making this appeal, with some other community. Immediately following this introduction, comes the intended justification of this act.

This consists of two parts: the assertion of certain general propositions, which the authors of this manifesto or appeal held to be self-evident, requiring no proof to establish them; and the application of these general and self-evident truths to the particular notorious historical facts existing in their case, which facts are concisely narrated. The general truths here announced, are those proclaimed in the Declaration of Rights previously promulgated in Virginia, some of which I have stated in a former number. They are, in brief, these:

That all men are created equal; and are endowed by their Creator with certain inalienable rights; among which are the rights to life, to liberty, and to the pursuit of their happiness. That to secure these inalienable rights, governments are instituted among men, deriving their just powers from the consent of the governed.—That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundations on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.—That, although these things are true, yet prudence dictates, that governments long established should not be changed for light and transient causes; and accordingly, all experience hath shewn, that

mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.—But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security.

Having thus shewn the clear right and solemn duty to do the act, the performance of which they had announced, namely, the dissolution of the political bands that had formerly connected the authors of this manifesto, and their respective constituents, with another government; provided, such a long train of abuses and usurpations on the part of this other government, as they had referred to, existed, the Declaration next proceeds to set forth what were the abuses and usurpations, the previous occurrence of which would give point and special application to their asserted self-evident truths, and so justify that act.

The catalogue of these abuses and usurpations need not be repeated here.

All men must admit, that if the facts stated therein were true, as stated, and if the general propositions affirmed were correct as affirmed, they made together a perfect demonstration of that which they were intended to establish, that is to say, of the right to throw off the government of Great Britain, by which government these abuses and usurpations had been practised. But not content with this clear demonstration of a strict right, the authors of the Declaration go on to state further:

That in every stage of these oppressions, they had petitioned for redress in the most humble terms; but that their repeated petitions had been answered only by repeated injuries. That they had also appealed to the native justice and magnanimity of their British brethren, conjuring them, by the ties of common kindred, to disavow these usurpations, which would inevitably interrupt their connexions and correspondence; but that they, too, had been deaf to the voice of justice and of consanguinity—Wherefore, they were bound to acquiesce in the necessity which denounced their separation, and to hold them, as they held the rest of mankind, enemies in war, in peace friends.

For all these reasons, the representatives of the United States of America, in general Congress Assembled, appealing to the Supreme Judge of the World for the rectitude of their intentions, did, in the name and by the authority of the good people of these Colonies, their respective Constitutents, solemnly publish and declare, that these United Colonies, were, and of right ought to be, Free and Independent States—That they were absolved from all allegiance to the British Crown; and that all political connexion between them and the State of Great Britain, was, and ought to be, totally dissolved—And that as Free and Independent States, they had full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States might of right do.

This is a full and faithful abstract, of everything contained in the Declaration of Independence, which any man can consider as important or applicable to the question now under examination. For the truth of this assertion, I refer to the Declaration itself, happily, now in the hands of almost every freeman in this country—I appeal then, confidently, to every candid mind, to determine, whether there is one word uttered, or one thought expressed, or even implied, throughout the whole of this important, clear and able State paper, to countenance the idea, that it could have been designed by its Authors, to incorporate the Several Communities therein for the First time Styled the United States of America, into one Nation? Whether it does not affirm, in terms, that the Colonies represented in the Congress which produced this act, were, and of right ought to be, Free and Independent States—And whether it could have had any other end or aim than what I have stated, that is to say, to declare and make manifest to the world, what was the condition of these States; and in tracing the causes which had produced this condition, to justify before the world the position they had already assumed.

I ask of the Constitutional Lawyer, to tell me, whether any act, professing as this does, to be declaratory of what is, and of right ought to be, can properly be considered as an instrument ordaining the existence of that which it declares, merely.—I ask of any Politician, even of the new school, to tell me, in frankness,

whether, at that time, the delegates of any Colony, assembled in a general Congress, could have had any authority to extinguish the rights of their Constituents, by amalgamating them with others, into one Nation, except under their credentials and instructions.—Should he say, as speaking in that spirit, he must say, that they could not have had authority derived from any other source, I then refer to these credentials and instructions, to shew, that all of them contained expressed limitations upon the power of these delegates, by which they were prohibited from doing any such act.

It is not necessary to recite all these papers; a part of one only will suffice. The Provincial Congress of New Jersey, assembled at Burlington, on the 21st of June, 1776, empowered their delegates, to join with the delegates of the other Colonies, “in declaring the United Colonies independent of Great Britain, entering into a confederation for union and common defence, making Treaties with foreign nations for commerce and assistance, and to take such other measures as might appear to them and you necessary for these great ends; always observing that whatever plan of Confederacy you enter into, the regulating the internal police of this province, is to be reserved to the Colony Legislature.” \* Words containing a more explicit prohibition, against welding New Jersey with the other Colonies, or any of them, into one Nation, could not well have been employed; and yet the authority communicated to the delegates of New Jersey, by these instructions, was even greater than that possessed by the Representatives of many of the other Colonies. If the nature and intent of the Declaration of Independence, are such, as I have stated; it is of little consequence to inquire, whether that decisive and important step was taken by its authors, jointly or severally; or whether it deserves the name of a joint act, or of several acts; for let the act be done as it may, it was certainly done for the purposes it announces, and could not have been done for any such purpose as the President ascribes to it, namely, to declare the Colonies one Nation, or the Colonists one People.

In further proof of this, I will here remark, that during the very

\* See Journals of the Old Congress, Vol. 2, pp. 224, 225.

time the Declaration of Independence was under consideration, to wit, on the 11th June, 1776, Congress began to take the necessary measures for preparing "the form of a confederation to be entered into between these Colonies," \* which measure was perfected long after the Declaration of Independence was uttered.

This of itself contradicts the assertion, that we were then one Nation or one People. But I will postpone to another number, any remarks upon this second great act of our political history; and will conclude the present, by saying, that it results from all which has been stated, that the Sovereignty assumed by the several States, in the manner I have before shewn, so far from being annulled, was confirmed by the Declaration of Independence, which had no other object than to declare their Independence, and to demonstrate to the world, that this independence was their's of right.

\* See Journals of the Old Congress, Vol. 2, page 297.

## V.

NORFOLK, January 9, 1833.

IN my preceding numbers I have attempted, and as I hope, attempted successfully, to shew, that at the very commencement of the Revolution, the several revolted Colonies assumed upon themselves respectively, to be Free, Sovereign and Independent States ; that this their original Sovereignty, so far from being annulled, was but confirmed by the subsequent Declaration of Independence, which had no other objects, than to declare this their new condition to the world, and to justify that which it so declared. In the pursuit of my original plan, I am brought to inquire now, whether this Sovereignty of the several States, confirmed as it was by the first great act recorded in our Political history, the Declaration of Independence, was afterwards abrogated, by the second act of this sort, the Articles of Confederation. I could much abbreviate the labour of this examination, probably, by at once opening the latter instrument and reciting its contents. But as my attention has been called to this subject, by the very extraordinary and new doctrines put forth in the Proclamation of the President, which doctrines I have undertaken to review, I shall continue to pursue the course I have already adopted ; therefore, before I examine the Articles of Confederation themselves, I will endeavor to clear away all the brushwood growing out of the arguments and narratives of this Proclamation, which I think calculated to conceal the objects of this compact, or to render them obscure.

The Proclamation says, “when the terms of our Confederation were reduced to form, it was in that of a solemn league of several States, by which they agreed, that they would, collectively, form one nation, for the purpose of conducting some certain domestic concerns, and all foreign relations.”



This passage is in the same paragraph with, and follows immediately after that, which I have formerly quoted and commented upon. Nay, it is actually connected with it by the copulative conjunction "and," being separated from the former by a semi-colon only. The leading object of the first part of the paragraph, as I have already shewn, was to prove, that before the Declaration of Independence, the People of all the revolted Colonies, had formed themselves into one nation, and had proclaimed the existence of this nation in that instrument, which was said to have been a joint act, executed by the parties jointly, and not the act of these parties severally. Scarcely did this first nation make its appearance, than as if touched by the wand of a magician, it suddenly disappears, and in its stead, we have this new nation, not formed by the People, but by a solemn league of the several States, who by this league agreed, that they would, collectively, form one nation, for some purposes. The objects to be attained by the creation of the first nation, and the Authorities with which it was clothed to attain these objects, were not stated in the narrative of its birth, nevertheless it was an august body, the greatest of all human creations, a Nation constituted by the free will of its own People; and it belongs not to mortal man, to define either the objects or legitimate authorities of such a moral being.

But when this second nation is introduced, it is seen at once as a rickety monster, as an accountable being without free will, as a Sovereign without supremacy, as the pigny creature of creators puny as itself; in a word, as a nation created for certain purposes only!

I wish the President had extended his argumentative narration of the rise and progress of the first Nation, and given at least a sketch of its decline and fall. I feel great interest in the fate of all nations, because, I believe that the light of not one of these Stars in the Constellation of human Society can be extinguished, except under direful and portentous circumstances, betokening the destruction of the whole galaxy.

Therefore, I sympathize very sincerely with the unhappy Greek, with the suffering and gallant Pole, and already feel anxiety for the fate of the industrious, frugal, honest, and brave Dutch. But when I am told of the existence of a Nation in this

“my own, my native land,” and that it was created by the only human authors who I acknowledge as having legitimate authority to create a Nation, its own People, *quorum pars fui*, I cannot but feel intense interest as to its fate. Did its authors become convinced, like some Philosophers of the olden time, that a People occupying a territory of vast extent, could not long exist in freedom, and in peace, as one Nation; because, unfeeling and interested majorities, would more probably oppress minorities, than any single despot; and therefore, sacrificing their ideas of splendid grandeur, to their love of liberty, destroy the work of their own hands, leaving no memorial to tell even that “Lyons was”; or did this new monster nation, raise its parricidal hand against the prior work of the authors of its own being, and bring it to an untimely end, to gratify its own lusts? If “History is Philosophy teaching by example,” the narrative of the downfall of this first nation would doubtless furnish some useful lessons to statesmen of other times.

But it is lost, “and like the baseless fabric of a vision, has left not a wreck behind.”

Then, let us not deplore its unknown fate, but turn our attention to its successor.

The difference between the author of this Proclamation and myself, is radical and irreconcilable. He contends, that the inhabitants of these now United States are “one People.” To prove this he asserts, that before the Declaration of Independence, they had formed themselves into “a nation” the existence of which was proclaimed in that act; and that afterwards, when the terms of this their first association (called now a confederation) “were reduced to form, it was in that of a solemn league of several States, by which they agreed, that they would collectively form one nation,” for certain purposes which he expresses. On the other hand, I have contended, that these inhabitants are not now, nor ever were, one People, but always constituted several separate and distinct communities, which even in their colonial state, had long existed as such, and independent of each other.—That before the Declaration of Independence, these communities, impelled by a sense of common interest, and of common danger, associated themselves, not to form one nation, but by the agency

of certain delegates selected by them respectively, to consult together, and to recommend to each other, the adoption of such plans, as might be thought to conduce most to the advancement of this common interest, and to security against this common danger.—That afterwards, accidental circumstances, beyond the control of these several communities, having deprived them of all regular government, they were severally constrained by the force of these circumstances, to form a new government, each for itself; and so to assume Sovereignty.—That in this situation, a decent respect for the opinions of mankind, induced them all to proclaim their new condition, and to justify what they had done; and that this was the sole cause and object of the Declaration of Independence, which so far from declaring that these communities were then “One Nation,” declared expressly, that they were Free and Independent States. I contend further, that the original association of these several distinct and independent communities, having for its objects the very general purposes I have mentioned, did not invest the delegates deputed to represent them in the association, with sufficient authority to attain its purposes.—That under such circumstances, it was very soon discovered, that its objects could not be advanced, happily; therefore, it became desirable, to give body and being to this association, which, like the earth, “in the beginning, was without form.”—That to reduce the association to form, by prescribing precisely its intended objects, and by bestowing upon it defined powers to attain these prescribed objects, it became necessary that the original parties to the association should enter into a Covenant with each other, for these ends; and that this Covenant is to be found in the Articles of Confederation.

It will be seen from this exposition, that I concur with the author of this Proclamation, when he says, that “when the terms of our confederation were reduced to form, it was in that of a solemn league of several States,” except, that in order to make it accurate, I desire to amend this expression, by substituting association for confederation. Previously to the formation of this solemn league, the States were united by the vague and uncertainties of a common interest and a common peril only. But in what this common interest consisted, or what this common danger might

require, neither was or could be defined; and therefore, the connection to promote these general ends, being necessarily as indefinite as were its objects, their association was an Union, merely. It was this solemn league alone, which converted this general, simple and undefined association, into a particular confederation. —And here, I must remark, that although the author of this Proclamation, had announced in the former part of this very sentence, that we had proclaimed ourselves a Nation in the Declaration of Independence, yet when he comes now to give the character of this Nation, it turns out, and by his own acknowledgment too, to have been nothing more than a Confederacy. No man before this author, has ever considered these terms as convertible: but the new theory, which denies that these States ever were sovereigns, can only be maintained by such a perversion of the well-settled meanings of words.

The quaintness and metaphysical formula, in which this annunciation is made, is well worthy of a passing remark. The Proclamation says, that “when the terms of our Confederation were reduced to form, it (that is to say the form) was in that of a solemn league.” From this some casuist might infer, that the purpose of this statement, was to affirm, that in substance we had been a Nation before, but when the terms of the existence of this Nation were reduced to form, this form was that of a solemn league; so that we still remained a Nation in fact, although but a Confederacy in form. As the author of this Proclamation however disclaims to employ “metaphysical subtlety in pursuit of an impracticable theory,” he surely could not have intended to draw himself, or to use any language which might justify another in drawing, that most subtle of all metaphysical distinctions, which seeks to distinguish the substance from the form under which it exists.

The new school of politicians must not, therefore, seek to derive any support for their doctrines, from this formula. Yet unless some such casuistry is employed, unless some distinction is taken between a nation and the form of its existence, it is impossible to conceive how by a solemn league of several States, said to have been intended to form their Confederation, they could have agreed, that they would, collectively form one Nation.

The idea too of a Nation formed for certain purposes only, con-

sisting of the same people who had previously formed themselves into a Nation for other purposes, and of the co-existence of these two Nations, is a conception, which as it seems to me, is truly worthy of the best scholar in the new French school of Eclecticism. I can conceive of one Nation, having two or twenty governments, designed for as many different purposes, and all held in due and orderly subjection, within their established spheres, by the will of the Nation which created and preserved them; but I freely confess, that the idea of one People divided into two Nations, surpasses my humble comprehension.

All this, however, is of little consequence, I admit, if the fact be as the President affirms it, that by their solemn league of Confederation, the several States who formed it, "agreed that they would form one Nation," whether collectively, or in any other way, whether for the purposes mentioned in the Proclamation, or for any other purpose whatever, is of no moment.

This fact can only be learned from the terms of the league itself, for fortunately, we are not to be again perplexed with any enquiry as to the character of the parties to this league, or as to the manner in which it was executed. It is conceded that the parties were several bodies politic called States, who not only did, but of necessity must, have entered into it, each for itself alone.

Let us now, then, examine this league.

The Articles of Confederation-constitute an act so long, containing such a number of various provisions unconnected with each other, that it would be difficult to make any abstract of its contents, of such brevity as would suit this occasion. Nor is this necessary for my present purpose, which is merely to ascertain, whether it was the object of this instrument, to divest the States of their original sovereign character.

A reference to some few of these articles only, will furnish matter so conclusive upon this point, that it would be useless to press the examination further, to prove, that the President mistakes the object and character of this instrument as much, as I have already shewn, as he mistook the purpose and character of the Declaration of Independence.

The Act of Confederation was agreed to by the Delegates of the several States assembled in a general Congress, on the 15th

of November, 1777, but, as these Delegates had no authority to bind their respective Constituents in this mode, Congress directed that the Articles should be submitted to the Legislatures of the different States, and if approved by them, they were advised, to authorize their delegates in Congress, to ratify the same, which, being done, the Compact should become conclusive. On the 9th of July, 1778, this act was actually ratified by eight States, in the mode suggested. They being a majority of the States, and Congress having information, although not such as was regarded as official, that many of the other States had ratified, or would agree to ratify it, in the mode pointed out, and being urged to do so by the necessities of the country, promulgated it on that day.

The delegates of North Carolina and of Georgia were not present in Congress, when this promulgation was made, but arriving soon after, those of North Carolina ratified the act in behalf of that State, on the 21st of July, 1778, and those of Georgia three days afterwards, on the 24th of the same month.

The ratification on the part of New Jersey, did not take place until the 23th of the following November. Delaware did not ratify until February, 1779; and Maryland refused to ratify until 1781.—Her ratification completed the act; and on the 2d of March, 1781, Congress assembled under the new powers conferred upon it by this instrument. These facts of themselves are decisive to prove, that the Articles of Confederation were not designed to affect, in any way, the Sovereignty of the States, for otherwise, between July, 1778, and February, 1781, the Union would have been composed of parties connected by different bonds, and the Confederation (if it was such), would have been formed by States possessing different degrees of Sovereignty.

Both of which suppositions would be manifestly absurd.

But this matter shall not be permitted to rest upon inference merely, although that is a necessary inference, and is derived from the very strong facts which I have stated.

I will prove it incontestably, by the language of the Articles of Confederation themselves.—In the Caption of this act, it is entitled “Articles of Confederation and perpetual union between the States of New Hampshire,” etc., etc., naming each of the States.—The first of these Articles declares, that “the style (not

the name) of this Confederacy shall be, The United States of America."—The second Article is in these words, "Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States in Congress assembled."—Now, until it can be shewn, that one may retain what he never had, this Article must be conclusive, to prove, that the States were free, sovereign, and independent, before this instrument was agreed upon. Should it be said, that, although then sovereign, the ratifying States intended to delegate a portion of their original Sovereignty by this act, the answer is, that while they thereby avowed an intention to delegate portions of their power, jurisdiction, and right to the United States in Congress assembled; in this very sentence they retain expressly all their Sovereignty, freedom, and independence. This must be very obvious, when it is observed, that the delegations of power, jurisdiction, and right were to be made, not to the Confederacy styled the United States of America, but to the representatives of these United States in Congress assembled; which body, although a suitable assignee of such subjects, could never be considered, with any propriety, at least, as fit or capable to receive an assignment of the sovereignty, freedom, and independence of the several States, even if it could be imagined, that these States were willing to transfer the sacred deposit of their freedom to any body whatever.

I will not weary the reader by numerous other extracts from this instrument, which I could easily make, to prove the same thing, that, by the Articles of Confederation, the States, while transferring certain powers of government to the Congress thereby created, and retaining their sovereignty, freedom, and independence asserted their former possession of all these attributes of a State, in declaring that they would not part with them.—But I will here close the present number, reserving some few other remarks, which I purpose to make upon that part of the Proclamation, in which the powers enjoyed by the old Congress under the Articles of Confederation, is treated of, and, as I think, misrepresented.

## VI.

NORFOLK, January 12, 1833.

ALTHOUGH in my last number, I have established beyond all doubt, as I think, that the Articles of Confederation, so far from being intended to amalgamate the People of the several States into one Nation, were designed to form them into a Confederacy, in which each State retained expressly its own sovereignty, freedom and independence, yet there are certain remarks made in the Proclamation, as to the character of the Confederacy thereby created, which must not be passed unnoticed. I propose in this number, therefore, briefly to examine these remarks, before I prosecute my enquiries farther.

It is so fashionable now, amongst those who adopt the new theory, to depreciate the old confederation, in order to infer from its supposed defects, the existence of sufficient power in the present government of the United States, to prevent their possible recurrence, that I am not astonished at any neophyte to the new faith, who follows former examples of this kind.

But when such things appear in a State paper, intended for the instruction of the People in their political history, and to deduce from thence their present political condition, I must confess, that I expected much more of accuracy in such statements, than I have yet found in this Proclamation.

The statements in themselves, are of little consequence at the present day, except as they manifest a disposition, to exhibit under false lights, facts and truths, which are supposed to have some bearing upon the new doctrines. So considered, they are worthy of notice. For this reason, I have already noticed many such assertions; and as my sole object is Truth, I will now proceed to point out others. The author of this Proclamation says, "But the defects of the Confederation need not be detailed. Under its



operation, we could scarcely be called a Nation. We had neither prosperity at home, nor consideration abroad." Yet it was under the operation of the Confederation alone, that the People of the United States gloriously achieved their independence, after a long and bloody war, compared with which, all subsequent wars have been but as the pastimes of children. It was under the operation of this Confederation alone, that Treaties of Alliance, of Amity and Commerce, and of Peace, were contracted with many of the principal Powers of the World, with France, with the United Netherlands, with Sweden, with Prussia, with Great Britain, and with Morocco, which Treaties have served as the model of every other of the like kind that has since been concluded. But the conquest of Freedom and Independence at home, and the conclusion of such leagues with some of the most powerful nations upon the face of the earth, in the eye of this author, seem to prove only, that we had neither prosperity at home, nor consideration abroad. Let us not rob the dead, in order to deck the living. The old Confederation was the wisest system of that sort, which the wisdom of mankind had ever produced; and but for a single circumstance, ascribable rather to the poverty of the people than to any defect in the system itself, it would probably have endured to the present day, a proud monument of the sagacity of its authors. Let those who prefer grandeur to liberty, deery it as they may, their objections apply equally to all Confederacies, and strike at the root of free government, wherever it may perchance spring up in a territory of much extent.

I agree with this author, when in this paragraph, he says, that under the operation of this Confederation, "we could scarcely be called a nation." But I wonder why the Articles of Confederation should have been cited by him, to prove, that by these the States had agreed to form one Nation, if this formation scarcely deserved such a name. The first Nation, created by the People, the existence of which, he said, was announced in the Declaration of Independence, vanished under the "Presto Pegone" of a magician who created a second Nation by the terms of this Confederation. By these it was then said, that the States "agreed, that they wou'd, collectively, form one Nation," for certain purposes. The first nation, when its character was developed by him, turned

out to be no nation at all, but was then admitted by himself, to have been a mere Confederacy; and no sooner did he create a second Nation out of this confederation, to destroy the first, than he now tells us, that this second we can scarcely call a nation.—Although consistency is not ever conclusive evidence of truth, yet the want of consistency has always been regarded as an admission of error, somewhere. Whether this error consists, in inferring the existence of the first Nation, in asserting that of the second, or in announcing that this last scarcely deserved to be called a nation, I leave to him and others to determine. At the moment when he is thus depreciating the old Confederation, this author seems much disposed, to bestow upon it many and far greater powers, than its warmest friends ever claimed for it. Thus, he says, that it was formed for the purpose of conducting “all our foreign relations.” This is certainly not so. To say nothing of other subjects; with the regulation of the great subject of foreign Commerce, which, in modern times, involves by far the most interesting of all the foreign relations of every State, the old Confederacy had nothing to do, except what might be effected by Treaties. At that day, however, commercial Treaties were rare, and the terms upon which such Treaties might be concluded by Congress, were much restricted, by the ninth Article of the Confederation, so that the whole power of regulating their own domestic Trade and Navigation, and almost all their foreign Commerce, devolved upon the several States exclusively; and this power was constantly exercised by them respectively. So true is this, that the manner in which this power was constantly exercised by them, was one of the great causes assigned for the amendment of the old Articles of Confederation by the present Federal Constitution.

Nor is this all. The Proclamation, in speaking of the Articles of Confederation, proceeds to say, that in that instrument “is found an Article, which declares, that every State shall abide by the determination of Congress on all questions, which by that Confederation should be submitted to them.” And immediately adds, “under the Confederation, then, no State could legally annul a decision of the Congress, or refuse to submit to its execution.”

Thus a pledge of faith on the part of the States, to abide by the determination of Congress on all questions, which by that Confederation should be submitted to them, is supposed to justify the author of this Proclamation in asserting, and as a consequence too of this, that no State could legally refuse to submit to the execution of any of their decisions. Vain would have been the reservation made in the second Article of the Confederation "by the jealousy of the States of all their power, jurisdiction and right, which was not by that confederation" *expressly* delegated to the United States in Congress assembled, if it was true, that no State could legally refuse to submit to the execution of a decision of the Congress, whether such decision was made to settle a question submitted to that body, or not.

But common sense tells every one, that when parties agree to submit some matter to the arbitrament of another, such a submission cannot authorize the arbiter to determine any thing, which was not submitted to him, or bind the faith of the parties to abide by any such unauthorized determination.

The President himself, has recently furnished a striking illustration of this obvious truth, in denying the obligation of the award made by the King of the Netherlands, (to whom Great Britain and the United States, by a compact as solemn as this our league of Confederation, had submitted the question concerning their common boundary,) upon the simple ground, that this arbiter had undertaken to determine what was never submitted to him.

If any one will take the trouble to examine the Articles of Confederation, he will find that there were but few questions submitted by that instrument to the determination of Congress. They are all stated in the ninth article; and are such, as to the submission of which, no two persons would or could disagree, probably. But should a question, unfortunately, have arisen, whether any matter was submitted, or not, as the parties to such a question, were admitted in the instrument itself, to be sovereign States, it resulted from necessity, that each had retained the right of deciding such a question for itself.—This effect was not the consequence of any want of power in the Old Congress "to enforce" their decisions, as the Proclamation supposes, for mere power

can never make right; it flowed from the very nature of the case. No arbiter is ever at liberty to decide for the parties, what is the subject submitted to him by them: it is his province to determine only that which they agree is so submitted. If the parties and their common arbiter differ, as to the extent of their submission, it would be idle for him to decide this matter, because the parties would at once agree to annul his decision, and to hold it for naught.

But if the common arbiter and one of the parties concur as to this point, and therein differ from the other party, wherever there exists a tribunal superior to them all, to that forum the dissenting party may appeal, to determine whether the matter decided was within his submission, or not.

Where no such tribunal exists however, (as is always the case where sovereigns are the parties,) it is of necessity, that each must decide this question for itself.

Nor is the faith of any pledged by the submission, to abide by any decision which it believes to have been unauthorized by that act. There is no necessity to "annul" such a decision, because if made without authority, it is already null and void of itself; and in refusing to submit to its execution, the party so refusing simply affirms this fact, and denies the obligation of an act of lawless power and usurped authority.

If this was not so, no prudent individual would, and no sovereign could agree, to submit any matter whatever, however unimportant it might be, to the arbitrament of another.—For, if the submission of one matter, could ever be considered as communicating a right to determine any other matter not submitted; or what is the same thing, if the submission of one matter to the arbitrament of a common arbiter, communicated to him, the right to determine for the parties, the extent of their submission, and bind their faith to abide by his determination, whatever that may be, this arbiter, although designed to be a Judge merely, becomes at once a sovereign, whose authority is without stint or limit. In the case of a submission made by sovereigns, they would strip themselves of sovereignty by the very act of submission; for he who holds all his rights at the will or discretion of any other, is no longer a sovereign, but a mere dependent for the enjoyment of such rights upon this other.

I have spent more time in exhibiting the falsehood of this new doctrine put forth in the Proclamation, than its native deformity perhaps required. But it was necessary to do so, I thought, because it was obviously designed, to constitute the foundation of another proposition, of a like kind, which is afterwards announced; and it was better to crush this monster while yet in its egg state, than suffer it to be hatched unnoticed, and then to come upon us in all the terrors of a fiery Dragon, bearing death on its wings, and pestilence in its breath. I have thus brought down the political history of these now United States, from a very early period, to that of which I have last spoken. I have shewn, that in their colonial state, they constituted several distinct Societies, whose affairs were regulated by governments absolutely independent of each other; that the misrule of the mother country induced them to revolt against its authority, and to shake off these governments, but that in throwing off their former governments, they did not dissolve their former associations—the Societies remained, after the governments were no more.—That the necessity for government to regulate the affairs of every Society, then compelled these communities, to establish some form of government, each for itself; and so to assert, each its own sovereignty and independence.—That a decent respect for the opinions of mankind, induced them all to announce this their new condition; and to justify the step they had taken.—And that this was the sole object of the Declaration of Independence, which so far from proclaiming that they were One People or One Nation, in its own terms declared them to be free and Independent States.

I have shewn further, that to secure the benefits of harmonious design, and concert and promptitude of action, in this their new condition it became important, to confirm their Union by a league of confederacy, declaring what were the objects of this Union, and by what means these objects might be attained.—That this was the sole purpose of the Articles of Confederation, which while establishing a general government for all, expressly reserved to each of the States, the sovereignty, freedom and independence they had before assumed respectively, and so much of their former powers, jurisdictions and rights, as were not, by that act, expressly delegated to the government thereby created—and

that it is false, to suppose, that under these Articles, the government thereby created became an absolute government without limits to its authority ; for although the several States were bound to submit to its decision in all matters referred to its determination by the Articles of Confederation themselves, yet these were but few in number, and, the question as to the extent of the submission, never was, and could not have been submitted by the States reserving their sovereignty, but the determination of this question, so far as it might interest any one, was necessarily retained by each of the States for itself.

From all this, I feel myself justified in saying, that the original sovereignty of the States, assumed by them in 1776, remained unimpaired, until the adoption of the present Constitution of the United States in 1789. Whether by this instrument, that sovereignty was then annulled, is the question which I will next examine. At present, I will take leave to say, that as the existing political condition of these States, is to be sought for in the Federal Constitution alone, it is to be regretted that the President thought it right, in his late Proclamation, to ascend to a period antecedent to the formation of this government, in order to teach the People, what is their situation under it. There was no necessity for this certainly, as he himself has proved ; and if he had confined himself to a construction of the present Constitution, although he might have been supposed to err in this, he would at least have avoided such numerous inconsistencies, and gross historical mistakes, as are now exhibited every where in his work, to the great mortification of many of those who wished to be his friends.

But the new school of which he has become a proselyte, in exacting passive obedience and non-resistance to all its precepts, seems to have imposed upon him as a probationary penance for all his former sins against its faith, that he should not only publicly abjure the creed whose truth he has so often and so recently affirmed, but that he should also proclaim from his high place, the infallibility and supremacy of the Pontiff, and that these States never were his sovereigns. Less than this would not have been accepted as a sufficient atonement for his former offences, or as a satisfactory token to entitle him to admission to the communion of those political Saints, the sanctity of some of whom, is at least as questionable, as the truth of their new doctrines.

## VII.

NORFOLK, January 16, 1833.

THE scene is again shifted and the Proclamation after asserting, and striving in vain to maintain, the doctrines of the new ultra Federal School, that these States never were Sovereign, at last comes down to the Old Federal faith, that the States, although once Sovereign, are not so now, because, by the Constitution of the United States, to use the words of this Proclamation, "they surrendered many of their essential parts of sovereignty," and therefore, "were no longer Sovereign."

I freely admit the truth of this conclusion, if its premises are correct. Nay, I go further even than the author of this Proclamation; for I concede, that if the States have ever surrendered the smallest factional part of their sovereignty, they thereupon ceased to be sovereign; and so far from retaining "their entire sovereignty," they have lost not only all this, but with it their freedom and independence also. Shew me, then, the transfer by the States of any portion of their Sovereignty, and I will willingly admit that all of it is lost. Nor do I regard it as worth an effort, to enquire, whether they may have saved in its wreck, any vain and useless bauble, to serve as a memorial of their former condition, in presenting perpetually to their view, the fact, that even this worthless plaything, must now be held under the mere courtesy of another. I care not much either, who the new Sovereign of the States may be, to whom their former Sovereignty has been surrendered. Whether he is the Ox Apis, who they had seen calved in their own fields, fatted in their own pastures, and had then in their own folly consecrated as an Idol; or whether he is the great King, the majority, the necessary and legitimate Sovereign of every "Nation," which has not yet appointed some other Chieftain to rule over it. The privilege of choosing a

master, is of no value in my eyes, except that if the States must have one, I should prefer one to many; for I have high authority for the belief, that none can serve two masters at the same time.

But is it true, that these States have ever surrendered any part of their sovereignty?

To answer this question, we must first endeavour to form a correct opinion of what Sovereignty is. Now, what is Sovereignty? Sovereignty is supremacy. A Sovereign, according to the very derivation of the word, is one who is over all, and who, therefore, can have no superior.—Strictly, then, there is no existing Sovereign, but He who made all, who preserves all, and who by His almighty power, may at any time rightfully, annihilate all. When the vanity of human Rulers, appropriated to themselves a name and character, which, of right belong only to their Creator, they tried to preserve all their attributes, although limiting their application to a more narrow sphere.

An earthly Sovereign thus becomes, one who is over all his subjects, who may of right do within his own dominions, all that is physically possible, and which does not contravene the will of his God. Such is human sovereignty, which alone I am now considering.

Founded upon this simple truth, is that great maxim of the public law, which asserts the equality of States; for as all States must have sovereignty, and as sovereignty is supremacy, therefore, all States are equal. From this maxim, do all Treaties derive their obligation; for although these instruments are rarely executed by the Sovereign parties in person, but by their agents duly appointed for that purpose, (whether mediately or immediately matters not,) the acts so ratified, are considered as the acts of the Sovereigns themselves, who being equals, may properly contract, which could not well be if the parties were not equal. Standing on this well established doctrine of the equality of the States, do —“we the People,” the only legitimate Sovereign in this land, erect our head, high as the proudest he who sits upon a throne, because we too are sovereign, and like him may rightfully do within our own dominions, all that mortals may.

Having thus shewn what Sovereignty is, and proved the truth of my definition by exhibiting its acknowledged effects, I will



endeavor to make this more manifest by contrast, in shewing what sovereignty is not. This is necessary, because, it is only by confounding Sovereignty with something else, that any difference has ever arisen, in the determination of the question which I have first proposed.—Sovereignty is not Government. If it was, as all Sovereignty is Supremacy, every government under the Sun of necessity, would be an absolute and unchecked Despotism; nor could free governments exist. But as Sovereignty and Government are not the same, we may readily discern, how it is, that although sovereignty is the same wherever it exists, yet governments are infinitely diversified. Sovereignty, like truth, is an indivisible unit. It may be enjoyed by one, or by many, at the same time, but then all the persons make but one Sovereign, as all the parceners make but one heir. Government being a mere delegation or assumption of power, jurisdiction and authority, each of which subjects are infinitely divisible, may have as many hues as the Chameleon, as many forms as Proteus.

Although sovereignty and government are distinct, easily separable, and, in modern times, often found separated, yet as the rights of sovereignty and the powers of government may, and for a long time did, co-exist, and in the same persons, the two became confounded; and it is always difficult to remove any error confirmed by long habit. Galileo suffered in a dungeon of the Inquisition, for presuming to demonstrate that the earth revolved around the sun, and Sidney died on a scaffold as a Traitor, for daring to prove, that government was not of divine origin. It was reserved for American Statesmen to give a practical illustration of the great truths which he taught, by inducing their fellow-citizens, while establishing governments, to retain their own sovereignty unimpaired, and so to shew, that sovereignty and government were not only separable and distinct, but that they ought not ever to be again united in this land, by any who wish to be free. This is the true American System, which has been but little understood, and therefore has been but imperfectly imitated anywhere else, as yet.

Notwithstanding sovereignty and government are not the same, yet it is readily conceded, that where the rights of sovereignty are admitted to be possessed by any government, there the gov-

ernment becomes the sovereign, and will continue such as long as it enjoys these rights, no matter by what means they may have been acquired.

The first and highest of these rights of sovereignty, nay, that which comprehends all the others, is the right to create a government to regulate the affairs of all the subjects of the sovereign, and to amend, alter, or abolish this government, at its pleasure. Stripped of this right, sovereignty is but a worthless name: but while this right is retained, although the government created by the sovereign's will may be endowed with the plenary Power of a Roman perpetual Dictator, yet as it lives but by the will of its Creator, it would be idle to call such a government a sovereignty.

When I speak of the right to create new, and abolish former governments, as the sure index and test of sovereignty, I do not, of course, refer to force. That may be, and more often has been, employed to destroy, than to preserve, rights of all kinds.

What I mean to assert is simply this: wherever a power exists in any Country, which power is admitted by all of that Country to possess the right of creating, amending, or abolishing the government of that country, this power must be superior to the government created by itself, and is the true and only sovereign of that country. Alterations of government made by such a power, are not properly termed *Revolutions*.

They exhibit only a change of will on the part of an acknowledged Sovereign: a mere peaceful repeal of some former ordinance, and the enactment of a new one, designed to attain the same great objects, by different, and, as the Sovereign believes, by better and more appropriate means.—Thus, when the King, Lords, and Commons of Great Britain in Parliament assembled, in virtue of the omnipotence or sovereignty of that body, recently altered the foundations of their government, by a mere Statute, the alteration was well termed a *Reform*, because those who made the change, it was acknowledged on all hands, had the right to make it. So, too, when the King of France, a few years since, granted to his subjects a new form of government, by a charter, wherein was defined their rights and his duties, this was not *Revolution*, but *Reform* of another kind only; for he who granted this charter, being an acknowledged Sovereign, had the confessed author-

ity so to do. And when these States abrogated the old Articles of Confederation, and established the present Constitution of the United States, this was not Revolution, but Reform of a kind still different, because, it was conceded by all, that those who made, might of right alter. But when the People of these Colonies shook off their allegiance to their former acknowledged Sovereign, and asserted their freedom and Independence, this was Revolution, and not Reform; for all admitted that this proceeding, however necessary and proper it might be, was not affected in virtue of any right acknowledged by both the sovereign and subjects. Having thus shewn what sovereignty is, and pointed out the sure test, by which its existence and abode may always be ascertained, I will now endeavor, by the application of this test, to determine, whether these States have lost any portion of their sovereignty by their adoption of the present Constitution of the United States.—And first, by whom was this Constitution adopted? To this there can be but one answer: it was adopted by the People.—But by what People? The President, in his Proclamation, says: “The People of the United States formed the Constitution, acting through the State Legislatures, in making the compact to meet and discuss its provisions, and acting in separate Conventions when they ratified those provisions.”

This statement, although correct in its terms, is yet much too general to be received as a direct and positive answer to my question. Therefore, as I do not wish to take shelter under ambiguities of any kind, I will say, that the present Federal Constitution was not made by the People of the United States, acting as one mass, or “Nation,” or by the will of the majority of any such mass: but it was made by the People of the several States, acting as several distinct and independent commonwealths, each in its own separate corporate character, and each binding its own particular minority, by the will of its own particular majority, according to its own established usages, and without regard to the will of any other.

A single well-known historical fact will put this beyond all doubt.—Two of the then Thirteen States, North Carolina and Rhode Island, refused to adopt this Constitution at first, nor did they do so until some time after the government which was

thereby created had gone into actual operation in the other eleven States. Yet, although the population of each of these States constituted a ratio to the population of all the States, even less than the ratio of the number of either of these States to the number of all the States, no one conceived, that either of these States could be bound by the will of a great majority of the People of the other States, or by the will of eleven-thirteenths of the States themselves.

Nor did any one ever think, that the will of that portion of the citizens of either of these States who approved the Constitution, and wished to adopt it, was not rightfully overruled and controlled by the will of the majority of their fellow-citizens in these States respectively, although, as I have said, this majority was but a small minority of all the States.

This is decisive to shew, that in adopting the Constitution, the States acted as communities absolutely independent of each other, each binding its own people to adopt or reject, as the constitutional majority of that particular State thought best. Here then is a new and conclusive piece of evidence, to prove, the sovereignty of these States respectively; for none "but a Sovereign," could rightfully have abolished the old government formed by the Articles of Confederation and have established this new government in its stead.

Having shewn by whom this government was created, I will next enquire, by whom it is preserved? The answer to this, is like that given to the former question: this government is preserved only by the agency of the States. Unless the States prescribe the time when, the place where, the manner in which, and the persons by whom, members of the House of Representatives of the United States may be elected, there could be no such Representatives chosen. Unless the States elect them, there could be no Senators of the United States. Unless the States prescribe the mode in which Electors for choosing a President and Vice-President of the United States shall be appointed, neither of these offices could be filled. And without a President to nominate, and Senate to advise, there could be no Judges appointed.

But a government without agents to perform either legislative, executive or judicial functions, would be as deformed a monster,

as that of which the President has spoken in this Proclamation, a Nation for certain purposes only.

It may be said perhaps, that although some of the States might refuse or omit to pass the laws necessary to give effect to those provisions of the Federal Constitution, which require the appointment of a President and Vice-President, of a Senate and House of Representatives, yet so long as others do so, the government would go on, heedless of the recusant States. I will not stop to enquire whether this is so; for even if it is, it does not vary my argument, the object of which is to shew, that the Federal Government is not preserved by its own means, but solely at the will and by means of the States. Its absolute dependance upon these for its existence, would not be less, if that dependance was upon some, and not upon all: nor would the tenure upon which it holds all its powers, be one whit less precarious, if these powers are held under the will of a majority only, than if they were held under the will of all the States. In either case, it is a dependant thing, and its dependance for existence is upon the States.

It may be said also, that the faith of the States is pledged, and all their officers are bound by an oath, to support the Constitution of the United States; therefore, it is not fair to reason from a supposition which rests upon a breach of a nation's faith, and the violation of the oaths of its People.

This is all true, but it only proves that for which I am contending, that this Federal Government is preserved solely by the States, who of necessity, are, and must be, the sole judges of what their faith requires; and who could absolve their own citizens from the obligations of this oath, as easily as they did from the obligations of that which pledged their allegiance to the British Crown.—And here let me beg of those who rely upon this argument of pledged faith, to read the last clause of the thirteenth Article of the Old Confederation; and in doing so, to remember the cases of North Carolina and Rhode Island, to which I have before adverted. I beg every Virginian too, to think of his own oath of fidelity, and to settle with his own conscience whether this is abrogated by that to which I have before referred.

Having thus shewn, that the Constitution of the United States was established by the will of the several States, and is preserved

only by the agency of the several States, I will next enquire by whom it may be altered?

The fifth article of the Constitution itself, answers this question. It will there be seen, that where amendments are proposed by two-thirds of both branches of Congress, or by a Convention called for proposing amendments, in either case, such amendments cannot be valid as parts of the Constitution, until the amendments so proposed shall be "ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress." By this it is obvious, that the States who established and who preserve this Constitution, can alter it; and the only difference between the powers exerted to create and to alter, is merely this, that in the creation, the assent of each State was necessary to make it obligatory upon each; but it may be amended by the concurrence of three-fourths only of the States, and amendments when so ratified, will be obligatory upon all. In this mode it has been four times amended. If, then, these States have created, do preserve, and may at any time (three-fourths of them consenting) alter this Constitution, and this too according to its own provisions, is it not idle to say, that they are not sovereign, because they have surrendered many of their essential parts of sovereignty by this Instrument? They may have surrendered much of their power, much of their jurisdiction, and many of their rights, by this Instrument; but one right they have not surrendered, certainly, and that is their right to alter this instrument itself, and so cancel by their will, the very act their will created, and by which, it is said, they have deprived themselves of their Sovereignty.

This very right to make and to alter government when made, is Sovereignty. It constitutes the possessor of it the earthly superior of those who are the earthly superiors of all others, and so makes Supremacy in that land where the right is admitted to exist.

I will pursue this examination further, in another number.

## VIII.

NORFOLK, January 16, 1833.

ONE obvious error pervades every part of this Proclamation wherein its author speaks of Sovereignty. Confounding sovereignty with government, and graduating the powers of government according to some fanciful scale, he infers, that whoever may possess what he considers the great powers of government, must be Sovereign; and that such as have not these powers, are not Sovereign. Hence he concludes, that as the States, by the Federal Constitution, have granted away "the right to make Treaties—declare war—levy taxes—and to exercise exclusive Judicial and Legislative Powers"—they are no longer Sovereign: but that "the allegiance of their Citizens, was transferred, in the first instance, to the government of the United States."—And he asks in triumph, "How, then, can that State be said to be Sovereign and independent, whose Citizens owe obedience to laws not made by it, and whose magistrates are sworn to disregard those laws, when they come in conflict with those passed by another?"

This can scarcely be called sophistry, it is palpable mistake, produced by ignorance of the great characteristic difference between two subjects totally distinct from each other, by which ignorance the author is frequently lead to confound them.—If he would but have paused a moment, to ask himself a few plain questions, his own answers to them would have prevented him from falling into any such errors. Is any government within these States, whether general or particular, whether State or Federal, created by its own will? If it is, such government must certainly be Sovereign, for none other than a Sovereign can create government. But if it is not, then it is as certainly the creation of the will of some other; and its Creator must continue to be the superior of its creature, unless in the act of creation, or at some other time, it has transferred to the Creature, the right to pre-

serve itself, in opposition to the will of the Creator; in which case also, the creature may become a Sovereign.

Now does any government, of any kind, within these States, enjoy the right to preserve itself against the will of its creators? There is no one to be found, as yet at least, so profligate as to affirm this, although it is apparent, that there are some, who would try to prove by argument what they dare not assert as fact; and who at some time or other, will probably offer to establish such a right, "*ultima ratione*." Then, if none of our governments are created by their own will, or can be preserved by their own will, when that is in opposition to the will of those by whom they were created, there is no semblance of truth in the position, that any of them are Sovereign: because, they too, are all of them compelled to acknowledge a Superior. And the argument which would infer sovereignty in one, from the want of it in another, must be unsound, unless it can be shewn, that of two falsehoods one must be true.

"The right to make Treaties," etc., is not a more direct emanation of sovereignty, than the right to punish crimes, to prescribe the modes in which alone property may be acquired and held, to create Corporations (whether for Banking or any other purpose), and the like. If the exclusive possession of the former powers, prove Sovereignty in the general government, the exclusive possession of the latter powers, which are equally necessary and important, would prove Sovereignty in the particular governments; and we should then see the case of two Sovereigns—of "Two Kings of Brentford." But as such a conception has never been entertained, except in the imagination of a humorous dramatist desirous to divert by a ludicrous exhibition, I presume grave Statesmen would not resort to such authority, to prove the verity of their theories.—Because there cannot be two Sovereigns in one Country at the same time, however, it does not follow, that there is no Sovereign there. In denying Polytheism, no man affirms Atheism, simply because both are falsehoods. Nor in denying that all or any of the governments within these States are Sovereign, does any one affirm, that there is no Sovereign here. Sovereignty must abide in every State, or it cannot be a State. It abides in this country as perfectly as it does in Russia, or in Turkey, not in the general



or particular governments, however, but in the People ; and who The People are, I have already shewn.

This Sovereign People might, if they pleased, have exerted directly all the powers which, in the exercise of their Sovereign will, they have seen fit to delegate to others. If they had done so, we should have had a pure Democracy, where, as in a pure Despotism, the Sovereignty and the government are united.

But they did not choose to do so ; and thought it wiser to establish a Representative Democracy. It results from the very nature of this form of government, that the Sovereignty remains with the People, while the government is in the magistracy, their Representatives, agents, and servants. Grouping all these magistrates into two great classes, of Federal and State agents, the Sovereign People have said to one of these classes, we assign to you the duty of making treaties for us, etc. To the other class they have said, we assign to you the duty of punishing crimes committed against us.

In assigning these different duties to their different agents, however, the Sovereign People neither impair their own Sovereignty, nor create one of those classes of magistrates superior to the other ; because, they are all but servants, acting in virtue of the power which each derives from their common master, and for his benefit. Nor is it possible to institute any comparison between the powers granted to these different classes of agents, in order to determine, in that way, which is the higher ; because, things totally unlike cannot be compared. Is the power to prescribe in what way alone property may be acquired, held, or transmitted, greater or less, than the power to make Treaties ? Is the power to preserve or take away liberty greater, or less, than the power to declare war ? Is the power to forfeit life greater, or less, than the power to levy duties and imposts ? If we pursue this scheme a little further, and descending from the two groups of Federal and State agents, examine the constituent parts of each of them, the subject will become more plain. Thus, the Sovereign People, in their different charters, or laws for the government of their representative agents, say to their Legislative servants, in either class, you shall make laws for us upon certain subjects ; to their Judicial servants, you shall judge and decide for the parties before you,

how these laws so made apply to their cases respectively; and to their Executive servants, you shall execute these laws and *judgments*. Each constituent portion of either class is so made the co-ordinate of and distinct from every other constituent portion of that class, not dependant for its powers upon any of the other portions, but upon the common superior of all, the Sovereign People. Now, it is as easy to conceive, how two or twenty governments may be made co-ordinates of each other, as to conceive how three or more co-ordinate departments of the same government may be made so.

Both cases pre-suppose a superior to all, by which alone such co-ordination can be established: for if any one of the classes, or of the Departments of either, should undertake to establish a co-ordinate of itself, the very fact of such a creation would shew superiority in the one and subordination in the other.

Then, if the author of this Proclamation, wishes to prove the want of Sovereignty in the State governments, by shewing that they cannot exercise certain great powers of government, he might save himself much trouble, for his conclusion is a truism. None of these governments are now, or ever were, Sovereign. But it is equally a truism, or if not, his own argument must prove it, at least to himself, that neither is the government of the United States Sovereign: because that, too, wants many of the most important powers of government. It is idle, however, to ask in reference to the States themselves, "how can that State be sovereign and independent, whose citizens owe obedience to laws not made by it?" Because, in a Representative Democracy, no law ever was made by the State itself, but by its Legislative agents; and if these agents exist in both of its two governments, State and Federal, the law made by such agents, is as much made by itself, in the one case as in the other. In either case, a question may arise, whether the law so made is in pursuance of the authority given by the sovereign People to their Legislative agents, to make laws; and if it is once conceded, that the act is not in pursuance of this authority, then no man can doubt, that such an act, whether done by State or Federal Legislative agents, is an act of mere usurpation, and is not law, although it may profess to be so, and wear all the forms of law.

The author of this Proclamation, labours under another strange hallucination, when he imagines, that the magistrates of the different States "are sworn to disregard their laws, when they come in conflict with the laws passed by another." No such oath is, and I feel very confident, ever will be required of them. It is true, that they are all sworn to support the Constitution of the United States, and equally true that this Constitution declares, that the laws made "in pursuance thereof," shall be the supreme laws of the land, anything in the Constitution or laws of any State, to the contrary notwithstanding. But to make the laws of the United States the supreme law of the land, they must be *in pursuance* of the Constitution: therefore, if the laws made by the Federal Legislative agents, are not made in pursuance of that Constitution which the State magistrates have sworn to support, these magistrates not only may, but must, if they regard the obligations of this oath, declare such unauthorized acts not to be law, and proceed to execute all the Constitutional laws of the State, which may be found in conflict with such pretended and usurped authority.

I acknowledge that I was startled by the boldness of another assertion, put forth in this Proclamation, and shocked at the moral turpitude, which it wantonly imputed to me and to thousands of others, some of whom, while dwelling upon this earth were ever regarded not only as wise, but as being what is far better, pure of heart as mortals may be. It says, in speaking of the States, that "the allegiance of their citizens was transferred in the first instance, to the government of the United States."

I am now so old, that it would be vain for me to attempt to recollect, how often in the course of a long life, I have been required to give assurance of my fidelity to my native State. But this I know well, that I never gave this pledge of my faith reluctantly, or with any mental reservation whatever. I always meant to relinquish and renounce, what in that oath, I said I would "relinquish and renounce the character of subject or Citizen of any Prince or other state whatever." I always intended to abjure what in that oath, I did "abjure all allegiance which might be claimed of me by any such prince or other state."

I always meant to be what I then swore I would be, "faithful

and true to the Commonwealth of Virginia so long as I continued a citizen thereof."

Is it possible, that in giving these repeated pledges, I was forsworn; and that in calling my Maker to witness the sincerity and singleness of purpose of what I regarded as a sacred promise, I was but invoking his wrath upon my false heart, and devoting my immortal soul to everlasting perdition? Has my country been so cruel and so base to one who wished to be dutiful, as to transfer his allegiance to another, and then to steal from his strong attachment to her, an abjuration of the very allegiance which she had transferred, and a solemn assurance of the continuation of that fidelity to her, which she had already relinquished and renounced? It cannot be. The Commonwealth of Virginia could never trifle thus and so meanly and wantonly too, with her faithful people. If they have been led into error by her, it is because she was first deceived.

Tell me then, any of you who deceived her, you who assisted in the formation and the adoption of any instrument that has transferred your allegiance to another, and afterwards took this oath of abjuration and fidelity yourselves, were you forsworn in doing so? I answer for you all, for those who are dead, as well as for those who survive, that you were not, and for you as well as for myself, I throw back this foul charge upon us all, come it from what quarter it may. Let the author of this Proclamation blunder as he may, in reciting our past political history—let him involve himself in whatever absurdities and inconsistencies he lists, in seeking to establish his new theory—let him reason as erroneously as he pleases, as to the powers and authorities of his government—all this may be pardoned. But when he assails the faith of States, and seeks to falsify the truth of their people, he touches subjects, upon which no man living should even sportively descant, because they involve relations far above his wisdom, even if that was much greater than it is.

The Commonwealth of Virginia has never transferred the allegiance of her citizens, to the government of the United States, either "in the first instance," or at any other time. She claims it of them all now, as strongly as she did on the 29th of June, 1776, when she first demanded it, and at any and at every other

time since: nor can any man living point to the act or instrument by which she has ever surrendered it. Not one word of any such transfer is seen, or ought to be expected to appear in the declaration of Independence. Not one word of any such transfer is found in the Articles of Confederation; so far from it, that instrument directly repudiates any such notion in the strong and emphatic words which it employs. Not one word of such a transfer is to be met with in the Constitution of the United States, which in all its provisions, addresses itself to the People, not as the people of the United States, but as the people of the several States, the obedience of which people to the legitimate mandates of the government thereby created, is claimed, only because such obedience has been promised, in their behalf, by their respective Sovereigns, the States, in their several ratifications of that Instrument. Nor have the citizens of any State ever taken, or been required to take, any oath of allegiance to the United States, or to their government; for Congress could find no authority for doing so, in the Constitution, and therefore have never presumed to prescribe any such oath. It is true, many swear to support the Constitution of the United States, but there is no more of incompatibility between the obligations of this oath, and those of their oath of allegiance to a State, than there is between the latter, and the obligations of the oath administered to any witness in a Court of Justice. The oaths relate to different subjects; and in swearing to support the Constitution of the United States, the party taking the oath, but reaffirms his fidelity to his State, which has chosen to adopt this Constitution as its supreme law, and so made it a part of its own code.

But Congress may punish Treason against the United States, and the Proclamation says, "Treason is an offence against Sovereignty, and Sovereignty must reside with the power to punish it." Let me here remark, that the power to punish Treason, is not cited to prove, the transfer by the States of the allegiance of their Citizens to the government of the United States. The author knew very well, that even the acknowledged subjects of any foreign power, might be punished for an act of Treason, just as properly, as the subjects of the Sovereign of the country within which the Treason was committed. In this respect, therefore, citizens and

aliens stand upon the same footing. The power to punish Treason is referred to merely to show, that the government possessing this power must be Sovereign, because "Treason is an offence against Sovereignty." Now with all due respect for the legal learning of the author of this State paper, I will take the liberty of suggesting to him, that in this country at least Treason is no more an offence against Sovereignty, than any other crime that may be committed within our dominions; and certainly not more than sedition, mutiny, or any other of that great class of offences, which strike at the existence of subordination by manifesting a contempt for the authority of government. All crimes which threaten to disturb the peace and good order of society (as they all do) are offences against the government of that society, and against the dignity of the Sovereign by which such government has been ordained, for the special purpose of preserving this peace and good order. To say then, that Treason is an offence against sovereignty, is only to affirm that Treason is a crime. But when this author adds, that "sovereignty must reside with the power to punish Treason," or any other crime, he says what no constitutional lawyer can admit; because if it was true, it would prove that every government in the world is a Sovereign, since one of the great objects in all government, is to punish crimes, and Treason is usually put at the head of these, for in the eyes of the governments which classify offences, the greatest is that which manifests contempt of themselves.

Suppose it was admitted however, that Treason is an offence against sovereignty, and that sovereignty must reside with the power to punish it, the learned author of this Proclamation cannot surely mean to assert, that the hangman who has the power to execute a traitor, or the judge who pronounces the sentence of death, and therein gives to the hangman his authority to execute it or even the Legislature who passed the law inflicting this punishment, and directing the Judge to apply it, are all or any of them Sovereigns. He must admit that they are all, each in his appropriate sphere, but the agents and delegates of that high power, which by its constitution, has said to its legislative servants, Do you declare the punishment of Treason, to its Judicial servants, do you declare upon whom this punishment must

justly fall, and to its Executive servant, the humble hangman, do you execute that which in this behalf, you may be required to execute, by my Judges. Now who is that great power, in whose name, and by whose authority alone, all these things may be done, rightfully? Certainly not the government of the United States, but the People who made that government, and by its Organic law delegated to all these their respective agents, the authorities I have stated. Then if Treason be an offence against Sovereignty, it is an offence against the People who constitute the Sovereignty; and the power to punish it, is their power, although in the exertion of this power, they may call for the action of a common hangman. We are so brought back to the former question, which I have before answered, who are the People?

This number is already drawn out to a much greater length than I intended, and must now be closed, but the subject is much too important to be dropped at this point; I will therefore continue it hereafter.

## IX.

NORFOLK, January 19, 1833.

IF the author of this Proclamation had asserted, that the several States, by the Federal Constitution, had parted with much of their power, jurisdiction and authority, he would have asserted a fact, that no one ever has or probably ever will deny; because, it is a truth obvious to all who read that Instrument. The only question is, do the powers thereby transferred comprehend Sovereignty? If they do, then the government of the United States, the assignee of these powers, is a Sovereign. But if they do not that government is not a Sovereign: and as this Constitution does not profess to transfer any power, jurisdiction or authority, to any other, than to the government which it creates, the former possessors must still retain their Sovereignty, this Constitution, *non obstante*.

This results from the very nature of this Constitution, that all admit to be a grant of enumerated powers; and which, therefore, cannot convey what it does not enumerate. Even what lawyers would call implied powers, that is to say, such as are not granted in terms, but are necessary to give effect to others which are so granted, strictly speaking do not exist under this Constitution, because, all such powers are given expressly by the seventeenth paragraph of the eighth section of its first article; and of course are not implied powers. Nothing could better illustrate the excessive jealousy that dictated the instrument, than this simple fact: or prove more conclusively, that the sovereignty, which the Proclamation in this part of it, concedes, to have formerly abided in the States, could not pass to the government of the United States under this Constitution. Because, Sovereignty is nowhere therein granted in terms; and it cannot be believed, that when powers actually "necessary and proper for carrying into execution"



other powers granted expressly, are not left to necessary implication, but are made the subjects of a positive grant, that sovereignty, the greatest of all human powers, would be left to mere inference, and to inference too from the grant of a few only of its many incidents, and these not necessary to its existence. The shadow may follow the substance by which it is caused, but that substance can never follow its own shadow, except when hurried on by the crazed brain of a madman.

But this is not all. Notwithstanding it was conceded on all hands, that the Federal Constitution was but a grant of enumerated powers, and of course would convey only what it enumerated, yet such was the jealousy felt by the States, that while adopting it, a number of the different conventions by whom it was ratified, to guard against the possible misconstruction and abuse of the powers therein granted, proposed various amendments to it. In consequence of this, the very first Congress which assembled under this Constitution, at its very first session, acting under the authority given to them by the fifth article, proposed these amendments to the Legislatures of the several States, by whom ten of them were ratified, in the mode pointed out in this article. These amendments thereupon became "valid to all intents and purposes, as parts of this Constitution." Two of them, the Ninth and the Tenth, are in the following words: Ninth—The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the People.

Tenth—The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the People.

Many reflections are suggested by these amendments, which have such direct bearing upon the matter I am now examining, that I will briefly state them. The first is, that although these amendments appear to be the joint work of Congress and of the State Legislatures only, yet in truth and in fact, they proceed from the People of the several States. They were suggested by many of the Conventions of the People who adopted the Constitution, and in consequence of these suggestions, were proposed by the first Congress, to the Legislatures of the several States, merely to satisfy the forms of the Constitution, and to give effect to

the declared will of many of the States, in the most simple and expeditious mode possible.

Again, these amendments are not donations, but reservations; exceptions out of a grant already made, the power of which grant, if not accompanied by such exceptions, it was apprehended, might, by some possibility, influence the subjects reserved. The only effect, then, which such reservations can have, is to preserve to the former possessors, the things reserved, and in their former plight. Moreover, these reservations are exceptions out of a grant of political powers: for the object of this Constitution, is to transfer such powers only. But if so, the reservations must refer to political powers also: for it would be very absurd, to save and reserve any thing from the action of other powers, in a grant that regards political powers alone. The reservations thus made by the States, in a grant of political power only, are exceptions out of such a grant, made by them to a corporate body created by each State and its co-States, which body is styled in the grant itself "the United States."

Even this is not all. In these two amendments, a marked distinction is drawn between Rights and Powers. The former are reserved to "the People" only; the latter "to the States respectively, or to the People." The reason of this is plain; in this country the People have two characters. In the first, they are regarded as mere individuals and subjects enjoying very many private rights: some of which, as men, they derive from their Creator, and as citizens they derive others from the very nature of the society of which they claim to be members. In the second character, they are regarded as the sovereign of these subjects. In this character they constitute a body corporate and politic, all whose rights (if they may be called such) are corporate rights: and therefore, are nothing else than corporate powers, which, when appertaining to any body, that is not only a body corporate, but a body politic too, at once become political powers. The People as individuals, have no political power, although they have many sacred natural and civil rights. The people as a body politic, or commonwealth, have no natural rights, although they have vast political power which they acquire either by their own force, or by their own consent. Right is eternal; it is an emanation of

Him whose Will is Right. Political power is of human creation; it may be right or not, according to the source from and the means by which it is acquired. If such power is seized by the strong hand of brute force, it is confessedly, power merely. If it is acquired by consent, although it is acquired of right, it is not right itself; because, the withdrawal of that consent, would make even such power cease to be right; and right being eternal, can no more cease to be, than He whose will it is. I speak not now of faith and truth, or of the obligations which they impose. I will refer to these hereafter. My present purpose is, merely, to shew the distinction between rights and political powers, which, although like sovereignty and governments, sometimes co-existing, and frequently confounded, are nevertheless separable and distinct; and in these very amendments are plainly set in contra-distinction of each other. Applying these several remarks to these amendments any one may see at once, the object and supposed necessity of the first.

The People of the several States, as mere individuals, enjoyed many rights, none of which had the States, who adopted this Constitution, any thoughts of subjecting, to the control of the political powers granted to the government they had thereby created. But as some of these rights had been specially enumerated in various parts of this instrument, and then saved expressly from the action of the powers thereby granted; and as the expression of one thing, is often regarded as the exclusion of all others not expressed, therefore, to guard against such effects to the People, in this case, the ninth amendment provides, that "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the People." Among the rights retained by the People, are the right to bear arms; the right peaceably to assemble and consult together; the right to petition for a redress of their grievances, whether real or imaginary only; and though last, not least, the right to instruct their own Representatives, whose duty it is to observe such instructions, notwithstanding the author of this Proclamation says, that they are not accountable to their particular constituents, for any act done by them, although done in their mere Representative character.

Nor is the object, and supposed necessity of the second amendment, less apparent, than of the first. Besides the right which the People enjoyed as individuals, the same people associated and bound together as members of different great bodies corporate and politic, enjoyed in that character, many political powers, of which they had as little thought of depriving themselves respectively, by their several ratifications of this Constitution, in this their corporate character, as they had of surrendering all their private rights, to the unbridled action of the other political powers thereby created and assigned to the new government.

But as the enumeration of some private rights, might possibly be considered as disparaging others not enumerated, so the enumeration of some political powers, might possibly be considered as disparaging others not enumerated, especially as some of the enumerated Political powers were of vast extent, such as the power of declaring war, of making Treaties, and over all, the necessary and proper means for carrying into execution these granted powers. Hence the Tenth Amendment provides, that "The Powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the People."

Here let me remark, that the idea of this Amendment is obviously borrowed from the second of the old Articles of Confederation, (to which I have formerly referred) the form of the expression being somewhat varied, in order to make it more appropriate to the new government of the United States. The Articles of Confederation were adopted by the different Legislatures of the several States, who by this league parted with none of the political powers, which they had previously possessed; therefore, their reservation was made to enure to their authors only, the States. The new Constitution however, was ratified by the People themselves acting by their delegates assembled in Conventions called for that special purpose; and by its provisions, it transferred many of the powers that the State government had formerly enjoyed exclusively.—Hence a different form of expression was necessary; and in that which I have quoted, words of such broad signification are employed as are sufficient to cover all political power, then existing ungranted to the United States,

whether abiding with the State governments, or with the People of the several States in their high corporate character.

There existed strong necessity, too, for the employment of the very words used in this reservation, supposing its object to have been like that of the second article of the old Confederation, to except out of the grant all powers not conveyed by it, and this in favor of the respective possessors of such powers. Whoever will take the trouble to read the Constitution of the United States with attention, will find that it uses the term state in many different senses. Sometimes it is used to signify the territory, as when the Constitution says, "The citizens of each State, shall be entitled to all privileges and immunities of citizens in the several States." Sometimes it is used to denote the governments existing in such territory, as when it says, "No State shall pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts." Sometimes it means, the People of the Territory assembled by their representatives, not for the general purposes of government, but for some different, and special purpose only; as when it declares, that "The ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same." And lastly, it is used to denote the unassembled People of any territory called a State, in their high corporate sovereign character, which they choose to assume when they agree to form,—conventions, to make or to alter government, or to do any other act, surpassing the legitimate powers of ordinary human institutions. In this last sense it is used in the Constitution, whenever that Instrument speaks of "The United States," meaning thereby the confederation of these distinct masses, who have mutually pledged their faith to each other, that they will severally uphold and support this Constitution, by all their means, moral and physical.

The term States being used in the Constitution itself in these various senses, it was not only proper, but necessary also, that the reservation should be co-extensive with the grant, and should employ its own words. But lest some doubts might arise as to the precise meaning of these, the amendment adds others still more comprehensive in signification, and of more general use.

In this respect at least the amendments differ from the Procla-

mation. They deal in no ambiguities or double entendres. They exhaust enumeration, and when they have done so, they comprehend any and every possible residuum, by general words. All the powers not delegated to the United States, by the Constitution, or prohibited by it to the States, are reserved to the States respectively or to the People. They could not define sovereignty, for none can do so. It comprehends not only all political power, that ever has been granted, but all that ever can be granted. I certainly mean no irreverence, when speaking of human sovereignty I say it is the one "I am," which in this sublime annunciation of its own existence, assumes to itself every possible political power, and every possible political attribute, which belongs to human omnipotence, whether the same has been called into action or not. Vain would be all reservations, if the grant conveyed any power like this, since it would authorize the grantee, to annul the reservation, the moment it was adopted. No man, it is believed, can suppose that the Constitution ever designed to transfer any such authority as this, to the government it creates, which therefore, cannot be a sovereign. Nor can the "Nation" whose existence is imagined in the Proclamation, claim any thing under this grant: for it is neither made to, or by this Nation; and if it had been, provided the name of this Nation is the "United States," it is from their grasp, the last Amendment expressly declares the ungranted powers to be reserved.

Then tell me ye casuists of any school, if you can, what is there to which this reservation of political power can apply, but sovereignty, including as that necessarily does, freedom and independence? Tell me, likewise, if you can, in whose favor this reservation exists, if not in favor of the People of the several States in their high character of a body corporate and politic, who possessed this sovereignty, when this Constitution was adopted by them in that character? You cannot say, that it applies to any enumerated right; for all these are reserved by the preceding Amendment.—You cannot say, that it applies to any other political power ungranted by this Constitution, and which had been previously granted to the State governments: for all such, if not prohibited to these governments by this Constitution, and so cancelled and annulled, are the subjects of the former part of this reservation it-

self. And if you say, that it applies to the political powers neither granted to the Federal or State governments, you describe sovereignty itself, the living source of all political power, from whence it all emanates, and with which, when ungranted, it always abides.—Then, if sovereignty and sovereignty only, is the subject of this reservation, in whose favor does the reservation act? It cannot act in favor of the Federal government: for it is reserved out of the very grant of powers made to it. It cannot act in favor of the United States as a supposed nation or body politic: for its very words declare it to be made as an exception out of any powers delegated “to the United States.” The State governments never had it, and therefore it could not be reserved to them. It must then abide with its former possessors the States or Commonwealths themselves, unless it is *in nubibus*; and once put their Sovereignty in abeyance, and States are no more.

I have now, I trust, defended successfully the Sovereignty of the States, against all the attacks made upon it by the author of this Proclamation, whether his approaches were made in secret mines or in open trenches.

I have proved, at least I think I have, that the States were independent in fact, before they declared themselves so in their declaration of Independence, which instrument was intended for others, and not for themselves.

That the necessities of the country after their Independence was declared, which had induced their previous association and union, invited, nay compelled the adoption of a general government of very limited powers, which was established by the Articles of Confederation, by which Articles the States expressly retained their Sovereignty.

That the defects of this Government, (which were probably ascribable to other causes than its own inherent vice,) afterwards induced the adoption of the present Constitution of the United States, which so far from creating a government with the powers of Sovereignty, recognized in various ways, the pre-existing and continuing sovereignty of the several States, its sole creators and sole preservers.—I have repelled with honest, though perhaps indiscreet indignation, the attempt made to tamper with the faith and truth of the State and its citizens, in the rash assertion that

their allegiance was transferred to another. I have denied the doctrine that Representatives were not bound by the instructions of their constituents, and that every government must be Sovereign, which possesses the power to punish Treason. By all these means, and by others, I have sought to establish the continuous freedom and independence of these States, who therefore, although bound by a holy bond of Union, which none ought to violate, are nevertheless Sovereigns.

What may be the effects of this Sovereignty, in regard to the Constitution of the United States, I will next examine. But here let me warn my readers, that if any still believe, that they owe no allegiance to their State, that their Representatives are not accountable to them, that every government which possesses the power to punish Treason is a Sovereign, or that by these or any other means the several sovereign States have become "a single Nation," they will but waste time in perusing what I may hereafter write, since it will all proceed upon the assumption of the negative of all these propositions.



## X.

NORFOLK, January 21, 1833.

ALTHOUGH I have contended, that the several States which compose this Union, are Free, Sovereign and Independent, yet let no one suppose, even for an instant, that in asserting their supremacy, I mean to deduce from thence, their emancipation from any obligation. A State must be constituted by rational and accountable beings; and although but an ideal creation, yet as it can only think and act through its members, it must bear their character.

It so becomes a moral and accountable being itself, bound by every moral obligation which attaches to man as an individual; and even in a higher degree.

I certainly do not concur with the learned author of this Proclamation, in the new precepts of ethics or of public law which he announces therein, when he says, "a binding obligation that has no sanction, may be broken with no other consequence than moral guilt,"—or when he infers from that postulate, that as "a league between independent Nations, generally, has no sanction other than a moral one; or if it should contain a penalty, as there is no common superior, it cannot be enforced." My error (if it is one) proceeds probably, from my utter incapacity to comprehend what is meant by moral guilt, or by a moral sanction. To my dull apprehension, moral guilt appears very like a true falsehood, and by moral sanction I must believe is meant physical morality. I doubt not, however, that all those who can understand what this State paper means, when it speaks of "aggregate character," or of "a nation for certain purposes," will as easily discover what it intends by moral guilt and moral sanction.

Nay, as formerly, we have been taught to understand the possibility of a constructive journey, and of moral Treason, we may

expect to hear in some commentary upon this pandect, of constructive and so unaccountable Representatives, and of the transfer of moral allegiance.

According to my old-fashioned notions of morals and of law, there is no human obligation without a sanction, whether such obligations attach to individuals or to States: nor does the existence of the sanction, depend upon the existence of any common superior to enforce it. To me it seems a solecism, to speak of obligations that do not oblige; and that which obliges the observance of an obligation, is its sanction, be that what it may. Nor would it be less a solecism, to suppose that the sanction of any human obligation, was to be found in the precepts of morality only: for as these precepts constitute mere obligations themselves, one obligation would so become the sanction of another. In such a case, it might probably puzzle the acumen even of those who can comprehend the theory of moral guilt, to decide which was the obligation and which the sanction. And if the existence of some *common superior*, was necessary to give validity to sanctions, the obligations contracted by States, could never be rightfully enforced by other States, so long as *the equality* of States is conceded. Yet no man before this author, has ever doubted the existence of such a right.

It would be foreign to my present purpose, to enquire, what is the sanction of national obligations, or by whom, or how, or when, these may be applied and enforced.

I may, perhaps, recur to this subject hereafter. At present, it will be only necessary to say that it is not morality merely, but the law, that gives the sanction of all human obligations which deserve that name. This law must be administered by human agents, who can employ none other than human means.—In the case of individuals it is the municipal law of their country, which gives the sanction of all their perfect obligations. This law is administered by magistrates only: but its sanctions, although declared by them alone, must be enforced when necessary, by the power of mere men. In the case of States, it is the public law of the civilized world which gives the sanction of the obligations of Nations. This law is administered by States alone; and the sanctions declared by it, must be applied and enforced, when neces-

sary, by the physical power of their subjects, who, as in the former case, are mere men. Thus it occurs, that in all cases, the preservation of human Rights, must be entrusted to the hands of human power. But until this guardian becomes his own ward, power and right will not be confounded, any more than the obligation with its sanction, or either with the physical force, that may possibly become necessary to apply the one or to enforce the other.

If a State as a moral being may contract an obligation, as an accountable being it is obliged to keep its faith, and to observe the promise it has given. Should it refuse to do so, it incurs the guilt of violated faith, and renders itself amenable to the punishment of such guilt, which may then be rightfully inflicted upon it.

By whom, or when, or how, I will hereafter enquire. Whether this sanction prove efficacious or not as a sanction, cannot alter either the guilt or the right. The unknown or fugitive malefactor, who so escapes "unwhipt of Justice," cannot thus convert his crime into what this author would perhaps call moral guilt: nor must the powerful subject, who successfully resists the lawful commands of his Sovereign, and so prevents their execution, flatter himself with the hope, that he is but a moral traitor. The name of the State which violates its faith becomes the by-word of the civilized world. The decree *delenda est Carthago* will be uttered by that world: and while nations are but the Vice-gerents of Him, who delights in Justice, this decree must be executed,—not perhaps in the first, nor yet in the second Punic War, but Carthage must fall, and fall by human means too, for Carthage was faithless.

With this solemn truth deeply impressed upon my heart, and with this awful example full in my recollection, I will proceed briefly to enquire, whether the Sovereign States who compose this Union, have pledged their faith in regard to it, by the Federal Constitution: to whom that pledge was given: what was the object and extent of the pledge: by whom and how it may be violated: and what are the legitimate effects of such a violation. I will not argue the first question. It would be an insult to every American, to suppose that he ever had doubted, or could now doubt, upon this subject. We all admit, that the States, by their several ratifications of the Constitution of the United States,

pledged their faith, and severally promised "that it should be binding upon their people."

To whom was this pledge given? It could not possibly have been given to the government of the United States. This did not exist when these ratifications were had: and the very object of the ratifications was to create it, to preserve it, and to amend it, when the Sovereign parties saw fit to do so.

The Pledge was given by each State to its co-States; was given and received to and by each mutually and reciprocally; the pledge of one being the consideration of the pledge of another. These mutual and reciprocal pledges constituted a valid contract between them all, which, whether it may be more properly called "a league"—"a compact"—or "an agreement"—I willingly leave to the learned author of this Proclamation to decide. Nor is it of the slightest importance to my present purpose, to enquire, whether a Covenant made by a State, with its co-States, having for its object the establishment of government, is more or less solemn, than if the object of the Covenant had been to establish an Alliance, or to do any other act. If it be a Covenant at all, I admit, that the faith of the contracting Sovereign parties is mutually pledged to observe it; and whatever may be the form, or whatever the object of their covenant, *Fides servanda est*. No one can reasonably ask more, nor am I disposed to concede less than this,—all for which I contend, is, that the promise was made by every ratifying State, to its co-States, and by no possibility could have been made to a mere potential government, which, at the time of the promise made, had not, and by possibility never might have had, any actual existence. If this is so, the Constitution of the United States, is a covenant between the several sovereign States, by whom it was ratified, to which covenant the government thereby created, is not, nor by any possibility could be a party.

To ascertain what was the object and extent of the pledge, we must look into the instrument itself to which the ratifications of the several sovereigns refer. We shall there find, that to attain certain great and enumerated objects, a government was to be ordained and established, endowed with certain enumerated powers, for the attainment of the enumerated objects. Therefore, the

faith of the parties was pledged, each to the other; to create such a government, endowed with such powers, to be exerted for such purposes—to continue and maintain this government, in the free exercise of all these powers, while exerted for these objects—and so to support this Constitution. Further than this, it is confidently believed, that no one, at this day, can suppose the faith of the sovereign parties was ever pledged.

So far the way is smooth. But when it is asked, how and by whom the faith plighted by the high contracting parties, in their several ratifications of this their covenant, may be violated? The answer seems, at the first view of the question, to be not so easy. Yet there is no real difficulty in the way; provided our first approaches to it are all true and sustained; for this answer will be found but a corollary from the former conclusions.

Thus when it is asked, how this covenant may be violated? The general answer, is obviously this: It may be violated, by the refusal or neglect of any of the parties, to do any of the several acts, which they have respectively stipulated, in the covenant, that they would do: or by their doing any of the several acts, which they have respectively stipulated, in the covenant, that they would not do: and it cannot be violated by them in any other mode. For, while all the parties do and forbear to do, all that by the covenant they have promised to do and to forbear from doing, the performance is co-extensive with the promise, the latter is so fully satisfied, *et Fides servata est*.

So, too, when it is asked, by whom may this covenant be violated? The answer is, by some of the parties to it only. If all agree to disregard it, this is no violation, but a mere justifiable change or avoidance of the covenant, by the parties who made it, and who may at any time alter or abolish it at their will.—Nor is it of the slightest consequence, when the parties all concur, whether the change or avoidance of the covenant is effected in the mode therein prescribed or not. For, no one of its parts is more obligatory upon the faith of the parties, than any other; and they have the same right (all agreeing) to abrogate the part prescribing the mode in which alone it may be amended, as to change any other part of the instrument.

The whole is but a promise made by each to all; and all can

as rightfully annul the promise of each, made to themselves, as any individual may cancel at his pleasure, a promise made to himself.—Neither is it possible, for any other than a party, to violate any covenant. For if this was possible, the faith of parties would not depend upon their own will and ability, but upon the will of others, over whom they may have no control; and so faith never could be kept.

Strangers, not parties to a covenant, may by their acts, prevent the parties from fulfilling its obligations upon them: but such acts of strangers, constitute no violation of these obligations, for none can violate it, but such as the obligation obliges; and it is absurd to suppose, that it can oblige any others, than the parties, who voluntarily agreed that they would be bound by it. Then, the covenant entered into by each of these States with its co-States, can be violated by none but the sovereign parties to that covenant. If this was not so, the peace of Nations and the faith of States, would hang upon the will of every incendiary ruffian, who lives as the disgrace of the community of which he may be an unworthy member.

Here it may be asked, may not the government of the United States, or of any State, or of any Department of either of these governments, nay, may not any mere individual violate the Constitution of the United States? Doubtless, each of them may do so; and in so doing, would be guilty of a very wicked act, which, generally, would draw down upon the agent or agents, the consequences of a sanction, they might then probably discover was not a mere "moral sanction," although the act might be done, even by this would-be Sovereign, the government of the United States itself, which, if a Sovereign, could acknowledge no superior. But a violation of the Constitution of the United States, whether perpetrated by their government, or by anybody else except a Sovereign State, is not, of itself, any breach of the covenant for the observance of which the faith of the high contracting parties to that Covenant is mutually pledged to each other; and this for the reason before given, that none but the parties can violate a covenant; and that neither the government, nor any individual, is a party to that Covenant. When the Spanish Intendant at New Orleans, in contravention of the 22d Article of our Treaty with

Spain, deprived the Citizens of the United States of the right of deposite in the port of that City, this was no breach of the faith of Spain; because when she was informed of the act done by her officer under color of her authority, she disavowed it as having been done in virtue of any such authority given by her. So, too, when upon a more recent occasion, a military officer of the United States, acting in contravention of many of the Articles of the same Treaty with Spain, entered her territory with the armed force under his command, seized upon her fortresses, slaughtered her subjects, and annulled her Sovereign powers; even this act constituted no breach of faith of the United States.

Because, they too, when informed of these acts, done by their officer, under color of their authority, disavowed them all, as having been done by him in pursuance of any power given by them to him for these purposes.

In either case, the misdeeds of these agents, although not breaches of the plighted faith of their respective Sovereigns, because unauthorized and disavowed by them, yet being done under color of their authority, bound these Sovereigns severally, to make reparation and compensation for the wrongs and injuries suffered; and in either case, such reparation and compensation was demanded and given.

Although it is true, that the covenant formed between any State and its co-States, cannot be violated by any other than by some of the sovereign parties to that Covenant, so as to make the violation of it a breach of their pledged faith, yet while man has free will, he may and often does commit wrongs, and crimes, and sins, which may threaten a breach of his Sovereign's faith.

To prevent this, every person, whether natural or Corporate, in every country, unless he be a bandit, or an outlaw, is forced to become the subject of some Sovereign, who in exchange for the protection it is bound to afford, and the responsibility it is compelled to bear for the acts of its subjects, is entitled to their obedience and allegiance. Hence, all in this country are the subjects of some Sovereign State, or amenable to the authority of the government of the United States, which government is itself amenable to the authority of the Sovereign States, its creators and preservers, and who whenever they may see fit, can rightfully become its destroyers.

If, then, that government, or these States, are notified of an act done in violation of the covenant which the States have all pledged their faith to support and preserve, by any of those dependent upon their authority, it is their sacred and solemn duty, to disavow the act done as having been done in virtue of their authority, to take effectual steps to prevent the repetition of such an abuse, and if it may be properly required, to make reparation for any injuries that may have been sustained from what has been done under color of their power. If any State when so notified and appealed to, refuses or neglects to do these things, it thereby adopts the act done as its own act, and assumes upon itself all the consequences.

In a country regulated as are the United States, the necessity for such a solemn appeal from one sovereign State to its co-States, must be very rare indeed. The acute moral sense of our people, the vigor of our laws, the division of our powers, the accountability of all our magistrates, the policy of our governments, whether Federal or State, all constitute so many different checks and preventives against the occurrence of any event that could justify or require any such step. It is possible, however, may have actually occurred more than once; and therefore, while treating of the mere theory of this our government, which theory, although exposed to very many practical objections (applicable not to the government, but to its administration), is more perfect than anything the wit of man has ever produced, I must pursue it to all its consequences. I am so led to the enquiry, what may rightfully take place, should any State, after notifying its co-States of a violation of the covenant perpetrated by any of those who are amenable to their authority, meet from them with a refusal to redress the evil complained of, or should see this their solemn appeal treated with neglect.

The first consequence is obvious, every State so refusing or neglecting, thereby adopts the act or omission complained of by its co-State, as its own act. It affirms thereby, that the act or omission done, or suffered by its agents, or subjects, has been done either by its order, under its permission, or with its approbation; and that it is willing to take upon itself all the legitimate effects of the act or omission, be these what they may.

What then is the next consequence? the high and solemn importance of this question, is a sufficient apology for me in postponing its examination to another number.



## XI.

NORFOLK, January 23, 1833.

IN my last number, I endeavored to prove, that by their several ratifications of the Constitution of the United States, the Sovereign States of the Union thereby established, entered into a covenant with each other, *to support this Constitution*—that for the observance of this covenant, each State pledged its faith to its co-States; and that this faith must be kept by all. I endeavored to prove further, that none could violate the faith plighted by this covenant, save some of the Sovereign parties to it; but that they might do so, either directly, by their own acts or omissions, or indirectly, by adopting as their own the acts or omissions of any others over whom they might lawfully exercise control. I am thus brought to enquire, what is the course that may be *rightfully* pursued by any State, should its co-States break their faith pledged to it, by doing directly any act in violation of that pledge, or by adopting as theirs, any such act done by others amenable to their authority?

I present the question in this abstract form, purposely; because, I wish to avoid, for the present, the investigation of any other matter not necessarily involved in the enquiry immediately before me.

Hence, instead of stopping to examine, whether any particular act is or is not a violation of the Constitution—or what is or is not the adoption by a State of such an act, when not done directly by itself—or whether the agents by whom the act has been perpetrated are or are not under its control.—I have assumed, that the act done is a violation of the Constitution—that it is done by a State directly, or when done by some other, is adopted by it as its own act—and that the act adopted as its own act, is done by such as are amenable to its authority. Thus the question

of *mere right* comes naked before us, and so presented must have a direct answer.

As to the general answer to this question, I had supposed, until recently, that no man could doubt. But as opinions upon this subject very different from mine, have been uttered of late, and from many and high authorities too, although my former confidence in my own opinions is in no degree shaken, yet I feel compelled while reasserting them, to endeavor to establish them by arguments, which, but a few weeks since, I should have thought as unnecessary as the attempt to prove any axiomatic truth,—in the case of mere individuals, if a contract is made between them, wherein the performance of one party, is the consideration for the performance of the other. No lawyer, no man, can doubt, that if one of the parties does not comply with such a contract, he has no shadow of right to ask or to expect the observance of it by the other party. The failure to comply by either, leaves to the other party, the privilege of avoiding and vacating the Contract altogether, or of tendering performance on his part, claiming a compliance from the other party, and if that is then refused, of demanding compensation for any injury sustained by a breach of the agreement.

So too in the case of Nations absolutely independent of each other, if a contract be entered into by them, the failure to comply with any of the provisions of the contract, on the part of either of the high contracting parties, leaves the other at liberty, to vacate and annul the whole contract as to itself: or while affirming a readiness on its part to continue its observance of the obligations, to require of the other party a like compliance.

In illustration of this doctrine, I need but refer to our own practice and to our own avowed principles. The act of July 7th, 1798, declared "That the United States are of right freed and exonerated from the stipulations of the Treaties, and of the consular convention, heretofore concluded between the United States and France: and that the same shall not henceforth be regarded as legally obligatory upon the government or citizens of the United States." The reason assigned for this declaration, in the preamble of the act itself, is that "these Treaties have been repeatedly violated on the part of the French government."

But for this fact of violation on the part of France, Congress would have had no authority to enact this Statute; because by the Constitution, these Treaties had been expressly made the supreme law of the land. Therefore, the Statute does not profess to repeal them, by any enactment, but declares simply, that they were no longer obligatory upon us "of right," because they had been previously and repeatedly violated by France. So shewing, conclusively, that the violation of a contract by one of the sovereign parties to it, is sufficient to absolve the other party from all its obligations, if this other party chooses to adopt that course.

Now, surely, no one will contend, that what every individual does, and may of right do, in regard to his contracts; what every sovereign State has done, and has done rightfully, in regard to their agreements: is forbidden to be done by any of these sovereign States, in reference to their covenant with their co-States. It may be denied, as the author of this Proclamation does deny, that any of these States is a sovereign. It may be denied that they have entered into any covenant with each other: or that the Constitution of the United States is such a covenant. It may be denied, that this covenant has ever been broken; or that any State is responsible to any other, for any breach of it. But if all these things be granted (and in the question propounded, they are all assumed,) it follows necessarily, that a violation of the covenant by any of the States, leaves every other State, who is a party to it, the right to vacate the covenant as to itself also.

Nor can the exercise by a State, of this right of declaring a broken covenant no longer obligatory upon itself or its Citizens, be ascribed, with any propriety, to the high and indefeasible right of Revolution, which abides with every people. This last is a mere individual right, it stands upon the great maxim, *salus populi est suprema lex*. It is the right of self-defence, which man cannot alienate, although he may forbear to exert it. This high right rides over all others whatever they may be. It claims to legitimatize the dethronement of Sovereigns, the severance of Empires, the dissolution of ancient Societies, the breach of allegiance, and even of faith itself. But the right of declaring a covenant broken by one of the parties no longer obligatory upon another, is the very reverse of all this. It constitutes the founda-

tion of all society, to secure it all governments of all kinds were instituted, and upon its preservation depends sovereignty itself. Upon it rests the efficacy even of this holy right of Revolution; for unless man can confide in his fellow, resistance of power would be vain; nor can any one confide in another, if their mutual pledges may be broken by one and remain obligatory upon the other, against his will.

The assertion by a State, of this right of declaring a broken covenant no longer obligatory upon itself or its people, does not necessarily produce any other effect, than their absolution from all the obligations formerly imposed upon them by the covenant while it subsisted as such. It leaves them, in the same plight as to the matter of the covenant, in which they were before it was entered into; in the same predicament in which they would have been if it had never existed.

The covenant, as to the party making such a declaration, becomes a mere nullity, without even any moral obligation upon that party, who, in declaring its exemption from all the former obligations of the covenant, so abandons thereafter, all shadow of claim to any privilege, right or benefit, to which, it might have been entitled under it.

The assertion, involves no breach of faith on the part of the State declaring the covenant broken by the other parties—so far from it, it affirms a breach of faith by them; and, as in the case of France, it so justifies the act declaring its absolution from obligations already violated by others. It disturbs no relations subsisting between any others independent of itself, but leaves to them, the full and free exercise of all the rights and privileges which the party vacating the covenant has claimed and exerted for itself alone.

If they are content to abide by the broken covenant still, they are free to do so, whether they think it has been violated or not.

If they choose to follow the example set, they have the same right to do so, as was exercised by those who set the example.

To the Moralist, or the Jurist, or the Publicist, these well-settled propositions need no illustration by any example. To others, I will give only one, found in our own history. The thirteenth of the old Articles of Confederation, declared, that "the

Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual ; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislature of every State." Yet did eleven only of the thirteen States, in opposition to the will of the two others, alter that solemn Covenant by the present Constitution of the United States ; and according to the provisions of this latter Instrument, nine States only might have done so, as to themselves, as legitimately, as did the eleven.

From whence was such a power, which all concede to have been rightfully exercised, derived ?

Certainly not from the Articles of Confederation themselves, for by this very article, the consent of "every State" was necessary, to make any alteration whatever in that instrument, nor from the fact that nine States then constituted a majority of all the States. If so, seven States would have been sufficient ; and moreover, the old Articles of Confederation might have been put into operation in the year 1778, when they were agreed to by a majority of the States, three years before they went into actual operation by the agreement of all the States.—The power was derived in this way. The old Articles of Confederation had been violated in various modes, by the refusal or neglect of several of the States, to comply with the requisitions and recommendations of Congress, made in pursuance of that Covenant. These repeated violations of it, had given every party to it, the perfect right to declare that it was no longer obligatory upon them. But although this was their clear right, prudence and policy dictated, that they should not exert this right, until they had provided a substitute for the old Covenant ; and until this substitute should have received the concurrence of at least nine of the States. This being done, their right of vacating the old instrument, which had been perfect before, was then prudently exercised. So that this very Federal Constitution, grows out of the conceded right of a State, to declare the obligations of a covenant no longer obligatory upon itself, when that covenant has been broken by other parties to it.

It must not be said, that the Articles of Confederation were the act of the State legislatures, and the new Constitution the act of

the people of the several States; and that the latter abrogated the former, because it proceeded from a superior power. The people of the several States, by a very long acquiescence, had adopted the Articles of Confederation as their own act. Under these Articles many Treaties had been concluded, many other engagements had been entered into, war had been carried on, and peace made, in their name, and with their approbation. All these, were acts, that could only have been done by acknowledged agents and Representatives of the Sovereignty, which, as has been shewn, then abided in the people of the several States, in their corporate character of States, and was specially reserved to them as such in this instrument.

Therefore, the change of this covenant, made in a manner directly in opposition to one of its provisions, and against the will of some of the parties, cannot be justified upon this ground, but must be referred to the other. If so referred, the reason of that provision of the present Constitution, which confined its operation "to the States ratifying the same," even after it might be ratified by nine States, is obvious. The old Covenant being annulled, the States were remitted to their former condition, and could not then be bound by any new covenant to which they were not parties.

This example well illustrates, what *a priori* reasoning had established, that a covenant broken by one party, may by any other party be rightfully declared, no longer obligatory upon itself, and so practically annulled, as to itself, by the party making this declaration.—If this was not so in the case of States, who can foresee the consequences? Two States agree to exchange different portions of their territories: may one of them retain that which it has agreed to give, and rightfully demand of the other the delivery of what was the equivalent? Commercial advantages are given by one, as the consideration of like advantages to be received by itself: Is one bound to give, and not entitled to receive? It seems monstrous to affirm these things; but yet such are the inevitable consequences of the proposition, that a broken covenant is still obligatory, upon the faith of the party by whom it has not been violated.—It will not do to say, that a party injured by a breach of a covenant, may rightfully enforce performance from the other.

This is true only where the innocent party is desirous to continue the obligations of the covenant, but does not apply where he is content to take the other remedy, of declaring the broken covenant no longer obligatory upon him. Either mode of redress may be rightfully resorted to by the injured party, and his policy or discretion must decide which he will adopt: but he cannot rightfully take both. If this was not so, the question of mere right, would necessarily be converted into one of brute force, and right and power would become the same. The conclusion from these premises is, that when a covenant entered into between a State and its co-States is violated by any of the parties to that Covenant, any State may of right declare the Covenant broken, and so no longer obligatory upon itself. In this view of the subject it is of no moment, whether the government of the United States be considered as a party to the covenant or not, because, if the government is a party, then the principle applies in terms; and if not a party, but only the agent of the parties who approve and sanction its acts, the act of violating the Constitution, becomes by adoption the act of all the principals who approve, and sanction it, and so the same consequence follows, in either case. This right of a State, to declare a Covenant broken by some of the other parties no longer obligatory upon itself, when one of the objects of the broken covenant is "to form a more perfect Union," is the right of Secession, neither more nor less.

He who denies this right, must contend, that a majority of the States, containing a majority of the People, may break this Constitution at their will, and that the minority of the States and People, is bound in good faith, and of right, still to observe it on their part. For if an unconstitutional law be once passed, the Sedition law for example, it can never be repealed without the concurrence of both Houses of Congress, that is to say, without the concurrence of a majority of the States in the Senate, and of a majority of the People in the House of Representatives.

Nay, this is not all, for no amendment of the Constitution can be made to redress the grievance, however great that may be; for if seven only of these States refuse to ratify the amendment, the other Seventeen not constituting three fourths of all the States, cannot make the amendment valid. There remains then

no relief, for an oppressed minority however great that may be, however cruel and unrighteous and wanton may be the oppression, but to appeal to the God of battles, and to assert their rights in arms.

And was it for this our forefathers fought and bled? was it for this that the wisest and best were convened, to frame and adopt a Constitution stuffed with checks and limitations of power in every line? Who ever wanted any guaranty of the right of Revolution? That exists always; it is inherent in and inalienable by man. Compact neither gives nor can take it away. Free government, is but a device to prevent the necessity of recurring to this natural right. The Constitution of the United States, in separating the Sovereignty from the government, making government rest upon a Covenant between the Sovereign States themselves, to which covenant the government created by it, is no party, but a mere agent of the parties, and in thus constituting each party the judge of the observance of this covenant, with the right of declaring it no longer obligatory upon itself when broken directly or indirectly by any other party, was a proud monument of human wisdom. Rob it of these qualities, and it becomes a simple institution, by which all power is transferred to the majority, who may rule the minority according to the unchecked will of the majority, without accountability to any other than itself—the thread-bare garment of ancient days, long since cast off, because it was always found worthless to shelter right against power.—Nay, so sure as effects follow their causes, must a hard military despotism speedily succeed to such a government, in such a Country as this.

I will close this number with this remark. Wherever the object of the covenant is to establish union or association for any purpose, between different parties, designing to preserve their separate existence under the Covenant after it is made, Secession is one of the remedies that may always be resorted to by any of these parties, for a breach of this covenant by any other: and is nothing more than a declaration of that fact. In 1788, eleven States seceded from the Union, established by the old Articles of Confederation, and established the present Constitution for all States who might choose to ratify the same. In 1798, the United



States seceded from the alliance established by their Treaty with France. In either case, the act proceeded from the same cause. In neither case, did this act produce any other consequence than it was designed to produce by those who adopted it; a mere dissolution of the former bond of union, or association as to themselves. Nor in any case, can any other consequence rightfully result from it, on the part of the State declaring its secession, although it is possible that other effects may flow from the course of the other party. These effects shall constitute the subject of my next number.

## XII.

NORFOLK, January 25, 1833.

WHILE seeking to establish the right of a State, to secede from an Union formed by a Covenant, the terms of which have been broken by other parties, I was not unaware of the objections that have been urged against the existence of such a right, not only by the author of this Proclamation, but by others of the School of Consolidationists. But I did not choose to break the thread of the argument, by replying to these objections at that time. Therefore, I assumed all the facts necessary to present the naked question of mere right. Having established this, I will now attend to these suggestions. Many of them have been before noticed and answered; and I will not here repeat these answers. But there is one which has not yet been presented, and to the examination of this, I propose to dedicate this number.

This objection is, that no State may rightfully assume as a fact, that the Covenant has been broken by any of its co-States, or act upon such an assumption, without violating its own faith: because the covenant itself has provided an arbiter to decide all such questions, by whose decisions the faith of all the parties must be bound. This arbiter is said to be the Supreme Court of the United States. To this objection, which is founded upon the supposed existence of a common arbiter, authorized and capable to decide all infractions of the Constitution, of which any State may have cause to complain, many answers may be given, all equally conclusive to shew, that no such arbiter, clothed with such authority, either does, or ought to be expected to exist.

The first of these answers is, that according to no legal possibility, could the case supposed to exist, ever be presented to the Supreme Court for its decision, even if the sovereign parties were content to abide by that decision.—The Judges of the Supreme Court, like all other Judges, are appointed to decide “cases,” and

not to amuse themselves or to edify mankind (as the President seeks to do in this Proclamation), with *obiter dicta*, or with public Lectures, communicating the results of their lucubrations upon mere questions of law, of politics, or of any other art or Science. These cases, too, according to the very terms of the Constitution, must be "cases in law and equity," and we have the authority of this court itself, for saying that there cannot exist any case in law or equity, but one presented to a Court by the representations of parties. The law professor in every College, nay, the very undergraduates of his Class, may deliver theses and dissertations upon questions of Sovereignty, of Politics, or of law, and may amuse and improve themselves by imagining suits brought by John Doe versus Richard Roe, to try these questions. But it would be a high contempt of every court, to attempt to steal from it an opinion, upon any question presented in a case brought by such imaginary parties; and not a less contempt of public justice, if a judge should wander out of the case before him, to prejudge some other, or to determine any mere abstract proposition not necessary to the decision of the matter submitted by the parties to his determination.—Now, the case supposed to exist, is the case of a Covenant of Union, believed by one of the parties to be violated by the government of the United States, the agent of all the parties. In such a case, the act complained of being already done by the government, the United States would have no need to become actors, or to go before any court to assert the power that has been already exerted; and it would be difficult to find the authority under which any one, as an actor, may implead the United States in their own courts.

But here it may be said, perhaps, as is often said, that the government of the United States can only act by Individuals, and upon Individuals; and as the courts are always open to such parties, all questions of constitutional right may so readily be brought before the Supreme Court. To this commonplace assertion, I oppose a flat denial. The evil complained of, may not be the consequence of any act whatever, but of a wilful omission to act, on the part of the government. In such a case, it cannot be pretended, that there is any individual, to whom the aggrieved sufferer may resort for redress, by a suit in court—or the evil com-

plained of, may be an act, which, although palpably wrong, may not require the agency of any individual; or although wantonly oppressive and cruelly unjust upon all the inhabitants of a State, may nevertheless, like every common nuisance, be injurious to no one of them in particular, and therefore would be an act not to be redressed in any private suit. Suppose for example, Congress should pass a law giving a preference to the ports of one State over those of another, which they are expressly forbidden to do in the very terms of the Constitution itself; what Individual could sue, or what Individual might be implead, for the perpetration of an act so ruinous to the injured State?

Even in cases where the Courts might take cognizance of the act done, because done by some Individual to some other Individual, the judgement in such a case could bind none but the parties to the suit. It would not repeal the unconstitutional act; and might not even furnish any compensation to the Individual injured.—Some agent of the law-makers in execution of their orders, which are in direct violation of the Constitution, does me a great injury. I sue him. The court agrees with me, that the act was lawless and unauthorized.

The jury awards an amount of damages to me as a just compensation for the wrong I have sustained. The Court gives me a judgement against him for that sum. But the agent is insolvent or runs away, and I cannot get the intended compensation. Will any one say, that the Court can compel those by whose orders the wicked deed was done, and to test whose authority for directing it to be done, the suit was brought, to pay me? Certainly not. I may petition them to do so, but if they reject my petition, the arm of the Judiciary is impotent to obtain for me the relief to which the Court itself has said I was entitled—even if the judgement proves efficacious in my case, that judgement cannot prevent the perpetration of a similar outrage upon me or my neighbour the next day, under the same usurped authority.

The judgement does not repeal the law, but declares simply, that it constitutes no defence to the defendant in the particular case brought before the Court by the parties then litigant therein. So that until the Legislature will be graciously pleased to repeal their law, every Individual of the State, may be compelled to go

through the same tedious and expensive proceedings, and to incur the same hazards, in order to obtain relief against an act of the government which has been already decided by the supposed arbiter to be an unauthorized usurpation of lawless power. Now what a strange arbiter must he be, whose decision, if in favor of one of the parties, is binding and obligatory, but if made against that party, is of no avail to terminate the subject of difference.

The next answer to this objection is this: where a case in law or equity is properly brought before the Court, by actual suitors, if in the progress of this suit, it is found to involve a question of the mere discreet exercise of political power confessedly granted, the Judges themselves acknowledge, that this question they are incompetent to decide, but as to all such matter, they are bound *jurare per verba magistri*; and, to say, as Judges, that whatever is, is right, although as Individuals, every one of them may know it is not so. While doubt exists, whether the political power exercised is granted or not, the Court may give an opinion upon the subject. But let it be once conceded, that the power has been granted by the Constitution and the Court is then compelled to say, that it has nothing to do with the question of policy, nor is authorized to ask, why such power has been exerted.

If Congress declare a war, although for the most unrighteous purpose for which war ever was declared by the veriest tyrant that ever disgraced a throne, the Judiciary must apply the sanctions of the law, to all acts done contrary to the wicked will of the Legislature.

If the President and Senate make Treaties, sapping the very foundations of the Constitution, the Judiciary cannot declare them void, or prevent their execution by the executive. If Congress wantonly levy duties and imposts for any purpose whatever, the Judicial power is helpless to afford relief.

They cannot injoin the marching of armies, the sailing of fleets, the slaughter of innocent men, the levy of taxes, or the execution of Treaties.

Yet it is precisely in such cases, that the interposition of the Sovereign parties to the Covenant, will, probably, ever be necessary.

It is idle, then, to say, that they may not interpose even in these cases, at least for the reason given. For the very foundation of the objection to such interposition, is, that as there is a common arbiter appointed to decide the case, the parties may not rightfully assume to decide it, each for itself.

The next answer to this objection is, that the evil complained of may be the act of the Judiciary itself, the enforcement of the Sedition law for example, or the application of the common law of England, as a criminal code, to the Citizens of the United States. Both these cases have occurred. Here, it would be monstrous, to refer to the Judiciary to decide whether the Judiciary itself had done right; and yet the objection applies equally to all cases.

Another answer is, that in this government, composed as it is of co-ordinate departments, there exists no reason why more respect should be paid to the acts of one of these departments, than to those of any other: and if it is admitted, that neither of these departments is bound by the act of its co-ordinate, it would be strange indeed to say, that the sovereign of all was bound by such an act. Now, the objection itself asserts, that the Judiciary is not bound by the acts of the Legislature or of the Executive; and no one, it is believed, will contend that either of the other departments is bound by the Judgements of the Judiciary, however obligatory these may be upon the parties.

I speak not of courtesy and respect, but of obligation merely. Should the Judiciary declare an act of the Legislature void, such a declaration, as I have already said, cannot repeal the law, although it may prevent its application to the particular case sub Judice. Congress may establish other Courts or other Judges to execute the law; or the President and Senate, in execution of such laws, may appoint additional Judges of the Supreme Court, who may differ from their associates and over-rule the past decision in the first new case, that comes before the Court. Nay the House of Representatives may impeach and the Senate condemn the Judges, for this very decision given in violation of the law enacted by them.

I do not mean to say, that any of these things would be right: but when reasoning upon the case of a violated Constitution, I

have a right to suppose, that all legal means would be employed by the violators, to make their violation effectual ; and so to prove, that the Judiciary cannot bind the Legislature.—We have the authority of the President himself for saying, that he feels himself as much bound by his oath to support the Constitution as any one else can do ; and therefore, if his agency is required, whether by the Legislature or the Judiciary, to do any act which he believes unconstitutional, he will not be made to sin against his own conscience and to violate his oath. His new partisans used to censure him bitterly for this assertion : but yet he never made one more moral, legal, or constitutional than it is. This is a government of concurring powers, its departments are all co-ordinates, nor can any one of them move far in any direction, without encountering its fellow, by whose concurrence alone, it may proceed in that way.

Of all these departments, the Judiciary is the weakest, because, it cannot act until invited to do so, its sphere of action is very limited, nor can it do any positive act, without the permission of the Legislature, and the co-operation of the Executive.

But lastly, can the human mind conceive a more audacious proposition, than that which suggests, that in a controversy between the parties to a Covenant, by which covenant an agent is created, where the matter in dispute between the principals, regards the authority exerted by the agent, the decision of this controversy must be referred to the agent himself ? The very exertion of the authority by the agent, is a decision that he believes he may rightfully do so ; and after this, it is gravely proposed, to leave the matter to the final arbitrament of one who has already decided it, and who has decided it, too, with the approbation of the very persons who proposed such a reference. In transactions between man and man, none could hesitate what name to bestow upon such a proposition : but where the Sovereignty of the States and the freedom of their people is concerned, a gross fraud is metamorphosed into a political theory only. Nor will the case be changed materially if the nominated arbiter has never yet decided the question, provided that arbiter be the Supreme Court ; this arbiter is not even given by lot. It is appointed by the supposed wrong doer, paid by him, accountable to him, sub-

ject at any moment to be punished and cashiered by him, and this too, for giving the very decision its conscience might prompt. Thus, matters which would constitute valid and legal objections, to witnesses, to Jurors, and to the Judges themselves, in the most trifling controversy between man and man, are to be overlooked and disregarded, in the support of a new theory, which seeks to constitute the Federal government the sole Judge of its own power.

I have great respect for the Judiciary of every country, but no lawyer or historian can tell, in what age or in what country, the Judiciary have ever been able, even where it was willing, to protect the rights of the people against the usurpations of Government. England has long been blessed with a Judiciary, composed of men, whose intelligence, whose integrity, and whose firmness, would not suffer in comparison with that of any others who have ever been or are now on earth. But when or who of these Judges have ever been able to save the privileges of the people from the prerogatives of the crown, unless the Judiciary was sustained by another branch of the government? And how many examples are there, of acts of Parliament made for the special purpose of saving the people from the Judiciary? For the Judiciary of the United States, I entertain at least as much respect as I do for any other Judiciary. I will not say more; and I cannot say less. With the individual Judges, I have nothing to do. They shall all be, if any one thinks so, what some of them certainly are, "like Mansfield wise, and as old Foster just." But all must know that the robes of office do not cover angels, but mere men, as prone to err, as any other men of equal intelligence, of equal purity, and of equal constancy. We all know, too, that some of the supreme Judges of the United States, have not thought it unbecoming their high places, to accept Foreign Missions, to present themselves as candidates for other offices, and to enter into newspaper disquisitions upon party topics. I do not mean to blame them for such things, but merely to shew from such facts, that the rights of sovereign States, when assailed by the government of the United States, could not be safely confided to a forum so constituted, even if it was possible that it could take cognizance of the subject. Nor can he be con-



sidered as a discreet friend to the Judiciary, I should think, who desired to embark it in this fearful strife.

I have answered this first objection, founded upon the suggestion, that the Supreme Court of the United States is the common arbiter appointed to decide all questions that may arise between a State and its co-States, touching the violation of their mutual covenant. My answer to the remaining objections I must postpone to another number.

## XIII.

NORFOLK, January 30, 1833.

A VERY careful examination of the late Proclamation presents to my view no other objection, there urged, to this right of secession, than such as I have already noticed.

The summary of its argument, and very nearly in its own words in this.—Each State has expressly parted with so many powers, as to constitute it jointly with the other States, a single nation. In becoming parts of a nation, the States surrendered many of their essential rights of sovereignty, and so were no longer sovereign; the allegiance of their citizens being transferred to the government of the United States. But this government thereupon became their sovereign, because it can punish Treason, which is an offence against sovereignty, and sovereignty must reside with the power to punish it. Moreover, the Constitution of the United States forms a government. Every government has a sanction expressed or implied, therefore, a government has a right by the law of self-defence, to pass acts for punishing offences against its authority, unless that right is modified, restrained, or resumed by the constitutional act. In our system, although the right is modified in the case of Treason, yet authority is expressly given, to pass all laws necessary to carry the powers of government into effect.—Hence, no State of this Union may secede, because such secession would destroy the Unity of the Nation, any attempt to do which act, would be an offence against the sovereignty of the government, and might be properly punished at its own discretion.

In reply to this argument, I have already endeavoured to shew, that these States do not, and never did, constitute a single nation: but are, as they ever have been since they assumed to be States, free and sovereign States, not consolidated into one nation, but united only by a written covenant of Union, which we call the Constitution of the United States. That the government formed by this Constitution, so far from being a sovereign, is a mere creature of the will of these States, subject to amendment, and rightful destruction at their pleasure, endowed with but limited

powers, that may be properly exerted for the attainment of enumerated objects only. And so far from possessing this natural right of self-defence, it is not even a party to the Covenant under which it exists, nor may rightfully exercise any one of its granted powers against any one of these States, its creators, although it may properly do so against their Citizens, when they are acting without the authority of their State, the only sovereign to whom they owe allegiance. That the union of the States thus resting upon a covenant entered into by every State with its co-States, when the terms of this Covenant are supposed to be broken by any of them, as there is no common arbiter to decide between the parties, it is of necessity, that each State must judge for itself, and act as its own judgement may dictate.

If in the honest exercise of this judgement any sovereign State declares the covenant, broken by its co-States, and chooses to dissolve the Union thereby established, for this cause, she has the perfect right to do so; and this makes secession from the Union, as to that party only.

I will not repeat the arguments by which these several positions have been maintained, but will follow my conclusion to all its consequences.

When a sovereign State decides, that the Covenant of Union which formerly bound her to her co-States, has been broken by them, and is therefore annulled as to herself, it is clear, that these her co-States, are not bound by her decision. They are then called upon to decide several questions, of a very different character, each for itself also.

The first of these involves their faith. Has that been broken as is averred? Should this be so, according to the honest conviction of any of the co-States, such State, as a moral and accountable being, is bound to acquiesce in the decision made by the first party, which is so acknowledged to be right. But if acting under its accountability, it honestly believes, that its faith has not been violated as is averred, a second question is presented. Is it better, while repelling the charge of violated faith, to acquiesce in the determination of the first party to annul the covenant as to itself? This question also, each of the co-States must decide for themselves respectively.

The subject now becomes a matter of naked policy, which like

every other question of mere expediency, must depend upon all the circumstances existing in the case. This question appertains to the Statesman, the mere theorist can neither comprehend, or hope to decide it, correctly; and, therefore, it would be very foreign to my present purpose.

But if after examining all the circumstances of the case, in all their different relations and probable effects, the co-States, whose covenant has been annulled, wrongfully as they may believe, determine nevertheless to acquiesce in the act vacating it as to the other party, the difference is at an end,—each party concurs, although for different reasons, in the same purpose, and no collision will take place between them.

Such was the course pursued by the States in 1788, when the old Articles of Confederation were annulled by the act of eleven of the States, who then seceded from the Union established thereby. And such has been the course pursued in very many other cases of Union and alliance that it would be tedious here to enumerate, but to which the recollection of every reader of history will at once recur. But if after a due examination of the subject in all its bearings the party of which I am now speaking, thinks itself unjustly aggrieved by the act of its co-State in annulling their mutual covenant, and seceding from the Union thereby established, and that it is expedient to push this difference to war, unquestionably it may wage war; and may so impose upon the other party the necessity of submitting to its dictation, or of defending itself by the same means.

Such a war, as to the party with whom alone it can commence, will differ from every other that has before occurred from the beginning to that day; because, even by the most complete success its avowed object can never be attained.

Independence, conquest, reparation of wrongs, security, punishment of indignity offered, may all be achieved by successful war; but victory can never make union, or repair the breach of its broken covenant. It behooves the Statesman, then, to deliberate well, before he makes a war for any unattainable object. Should the seceding party prove successful in the contest, it will so maintain its independence, and may then agree to enter into another Covenant of Union, “laying its foundations on such principles, and organizing its powers in such form, as to them shall

seem most likely to effect their safety and happiness," but this will be a new covenant.—Should the other party prove successful, it may conquer the territory, exterminate its inhabitants, change all the institutions of the seceding States, nay, do whatever else it lists, and which is possible: for who shall give law to conquest?

But it cannot revive the old Covenant of Union. That is gone forever, and can no more be recalled than yesterday.

If the Victor, in his clemency, chooses to spare the lives of his conquered enemies, to permit them to enjoy their former religion, and laws, and civil institutions, nay, to occupy the conquered country still, he may win the thanks of the vanquished, and perhaps beget in them a sense of gratitude towards the generous chief who has been thus forbearing and kind to a fallen foe. But let none mistake the character of the sentiment so produced. It is loyalty not patriotism; and let those beware of the loyalty of the grateful Mameluke, who may wish thereafter to harm his kind conqueror.

A subdued people have ever been the great agents in subduing others.

Extinguish any one, even the smallest of these now sovereign States, and rely upon it, many others will soon share their fate. A majority may subdue a minority, probably. They can only do so however, by means of force, which must be guided by a man; and if their chief is prudent, the subdued minority will as certainly unite to make him a military despot, as the people of Rome proclaimed the power of a Dictator to escape from the thralldom of an overbearing and selfish Senate.

Will the Victors seek to avert this consequence, by proposing to admit the conquered State into their Union again? She must come if they say so, but the Union thereupon becomes, to all intents and purposes, a new covenant. The rights of the conquered State are then derived to her, under the gracious gift of her conquerors, and not from her own free and sovereign will.

The old Covenant of Union made and sustained by equal and independent States, gives place to one of a very different character, in which there can be no mutual confidence, because it rests no longer upon mutual consent. Many generations must pass away, before any subdued people ought to be trusted as a component part of the Union by which they have been subdued. A

King may make conquests, and by many means may attach his conquered subjects to his person, and win their loyalty to his Crown; for his people are all subjects, and in his eyes, are all entitled to his protection alike. But you had as well insert some deadly poison into the veins of an animal, and expect it to live in health, as in a Representative Democracy, to admit immediately, the Representatives of a conquered people to become parts of its Union, and expect such a government to last long.

Then, the war waged to revive a broken covenant of Union, however successful may be its means, can never attain its avowed end. It may bring conquest, may make loyal subjects, or hollow-hearted pretended allies; but it cannot make real union. The union of free States can neither be made or preserved by force.

It is a solecism so to speak. Such a fanciful Union is consolidation in its most abhorrent form, wherein the majority, while it confines such, will wield not only their own powers, but those assigned to their subdued allies also.

I thank God, that in His infinite wisdom and mercy He has been pleased thus to ordain. The truths I have announced, ought and will teach moderation and forbearance to all who value the Union of these States. Each will look to the fearful consequences to itself, that may attend its own acts, and will abstain from pushing even admitted powers to oppression. The right of secession is the right of all; it may be claimed by one to-day and by another to-morrow, as each may find itself aggrieved. Its apprehended evils may be easily guarded against, by abstaining from exercising doubtful powers, or pressing legitimate powers until they become doubtful. The security of the Union is to be found in the common affections and common interests of the States, and not in the bayonets of its soldiery.

By such feelings alone was the Union first formed, by such sentiments alone has it been since maintained, and by such sentiments alone can it be preserved.

Once deny this right of secession when it is claimed, and prevent or punish its exercise by military force, and surely as night succeeds the day, our destiny as a free people is fulfilled.

But what may be done if a State unmindful of her faith will secede from an union to support which her faith has been pledged? If she leaves any common obligation unsatisfied, which may

be compensated by her, demand it, and if you can, enforce this demand. The War, if war shall be necessary to accomplish this end, is then rightful and just. It will have an object that may be attained, and when attained, it brings peace, the only legitimate end of every war.

But if she leaves no debt unpaid or any duty unfulfilled, or when she has made the compensation required, let her go and let her go in peace. If she is but a single State, she will soon learn in her wants, the value of the Union she has abandoned, and will speedily return, if the evils of its government are not intolerable. If there be many States, their right of secession will never be denied.

Should I pursue the subject, which this sentence suggests, I should tread upon the ground which belongs to the Statesman exclusively. It is the business of the theorist, to scan the nature of this government, and to deduce from thence its principles and its character.

It is the business of the patriot Statesman to apply these principles, and in their application, to adapt them to the circumstances of each particular case, so as to preserve this character. While he does so, he will but confirm the government in the conduct of whose affairs he is called to assist. But if he seeks to pervert these principles, or to change this character, he is a Revolutionist, whether his schemes are designed to be perfected by the arts of persuasion, the strong hand of force, or by any other means.

One remark more and I have done. The author of this Proclamation, while speaking of this right of secession, says: "To call it a constitutional right, is confounding the meaning of terms: and can only be done through gross error, or to deceive those who are willing to assert a right, but would pause before they made a Revolution, or incur the penalties consequent on a failure."

I will say nothing of the spirit which dictated these declarations; whether the assertion of this right be a gross error, not this author but an enlightened world will judge; and as to the motives which prompt it, they, like those which produced the declarations I have quoted, can be understood by Him alone who can read the human heart. To His inspection mine are willingly submitted: but I utterly disclaim the authority of this self-suffi-

cient personage, the President, to denounce me and all others, from his throne, as stupid fools or cowardly knaves, because we do not concur in his new political dogmas, but dare to think for ourselves. And what in the name of common sense, has the question of right to do with either his motives or mine? At last it will be found to turn upon what this author means by constitutional right, probably.

According to his idea, it would seem, that there are no constitutional rights but such as are granted by the Constitution; and, therefore, that the right of bearing arms, of peaceably assembling to consult about public affairs, of petitioning for a redress of grievances, are none of them constitutional rights, because no one of these is therein granted.

But according to my notion, every right, and every power too, not disparaged by any of the grants and prohibitions contained in the Constitution, are especially reserved therein, and so become constitutional rights and powers. The right of secession thus becomes a constitutional right.

I once thought, that none of the present generation would see the day, when these States would become "a single nation," or the government established by them "a Sovereign," claiming like every other sovereign, the rights of "self-defence," "a transfer of the allegiance of the citizens," and brandishing the weapons of its asserted powers in their faces.

Recent events, I acknowledge, have much diminished my confidence in this belief. The same events have strengthened another opinion I have long entertained, that there exists no middle ground, between the Federal government established by the Constitution and that which will speedily succeed it, a simple, absolute, unmixed and hard military despotism.

So long as this Constitution can be preserved, this may be averted.

Then let the sovereign States who made it, guard well this ark of their political safety, which they know contains the Holy Covenant wherein is written the commandments of their law. Let each constantly cry aloud to every other and to all their servants, in the words of the inspired one, "nor do you prefer any other constitution of government before the laws now given to you."

A VIRGINIAN.











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